



**MILPITAS CITY COUNCIL MEETING AGENDA
MILPITAS REDEVELOPMENT AGENCY MEETING AGENDA**

TUESDAY, JUNE 15, 2010

6:30 P.M. (CLOSED SESSION) • 7:00 P.M. (PUBLIC BUSINESS)

SUMMARY OF CONTENTS

- I. CALL TO ORDER by the Mayor**
- II. ROLL CALL by the City Clerk (6:30 p.m.)**
- III. ADJOURN TO CLOSED SESSIONS OF CITY COUNCIL**
 - 1) CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**
(Pursuant to CA Government Code § 54956.9) Tina Marie Jensen, v. City of Milpitas, Santa Clara Superior Court case #109CV144097
 - 2) CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION** (Pursuant to CA Government Code § 54956.9) County of Santa Clara vs. City of Milpitas, Milpitas Redevelopment Agency, et al., Santa Clara County Superior Court case #1-10-CV-173645
- 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**
- VI. INVOCATION** (Vice Mayor McHugh)
- VII. APPROVAL OF COUNCIL MEETING MINUTES** – June 1, 2010
- VIII. SCHEDULE OF MEETINGS** – Council Calendars for June and July 2010
- XIX. PRESENTATIONS**
 - Proclaim Parks and Recreation Month – July 2010
 - Presentation of Promoting Lifelong Partnerships in Your Community (PLAY) Awards to Milpitas Businesses
- X. 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.

- 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. Hold a Public Hearing and Adopt a Resolution Approving the Housing Element General Plan Amendment and Negative Declaration (Staff Contact: Felix Reliford, 586-3071)**
- 2. Hold a Public Hearing and Adopt Ordinance No. 66.3 Adopting the “City of Milpitas Standard Drawings, Specifications and Engineering Guidelines” for City Public Works (Staff Contact: Fernando Bravo, 586-3328)**
- 3. Hold a Public Hearing and Adopt a Resolution Approving Annual Engineer’s Report and the Levying of Assessment for Landscaping and Lighting Maintenance Assessment District No. 95-1, McCarthy Ranch (Staff Contact: Fernando Bravo, 586-3328)**
- 4. Hold a Public Hearing and Adopt a Resolution Approving Annual Engineer’s Report and the Levying of Assessment for Landscaping and Lighting Maintenance Assessment District No. 98-1, Sinclair Horizon (Staff Contact: Fernando Bravo, 586-3328)**

XVI. UNFINISHED BUSINESS

- * 5. Approve the Senior Center Entrance Vestibule Art Nominations (Staff Contact: Renee Lorentzen, 586-2786)**

XVII. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

- RA1. Call to Order/Roll Call by the Mayor/Chair**
- RA2. Approval of Minutes – June 1, 2010**
- RA3. Approval of Agenda and Consent Calendar (Items with asterisk*)**
- RA4. Review the Past Releases of Affordable Housing Units and Adopt a Resolution to Authorize Releasing the Restriction Agreements for Four Additional Housing Units (Staff Contact: Felix Reliford, 586-3071)**
- RA5. Receive the Market Demand Study Update on the Milpitas Silicon Valley Conference Center and Provide Direction (Staff Contact: Diana Barnhart, 586-3059)**
- *RA6. Authorize the Agency Executive Director to Execute a Contract to Purchase the Property Located at 230 North Main Street and Approve a \$6.8 Million Housing Fund Loan to the Agency’s Project Fund and Budget Change Form (Staff Contact: James Lindsay, 586-3273)**
- *RA7. Adopt a Resolution Granting Final Acceptance of the Midtown North Main Street Streetscape Improvement Project, Phase 2, Projects No. 8165 and No. 8153, Federal Aid Project No. RPSTPLE 5314 (004) (Staff Contact: Erickson, 586-3301)**
- RA8. Agency Adjournment**

XVIII. REPORTS OF MAYOR, COUNCIL AND COMMISSION

6. Consider Mayor's Recommended Appointment for the Alternate Member to the Planning Commission (Contact: Mayor Livengood, 586-3051)
- * 7. Consider Mayor's Recommendation for Re-appointment to the Library Advisory Commission (Contact: Mayor Livengood, 586-3051)
8. Review of the City Noise Ordinance (Contact: Councilmember Giordano, 586-3032)
9. Discuss the Issue of Contracting Out for Fire Services (Contact: Councilmember Gomez, 586-3031)

Emergency Preparedness Commission

- * 10. Requesting Approval of an Update to Commission Bylaws (Contact: Councilmember Polanski, 586-3024)

XIX. NEW BUSINESS

11. Receive the Monthly Economic Development Report (Staff Contact: Diana Barnhart, 586-3059)
- * 12. Approve Request for Installation of a Memorial Bench in Murphy Park Bench for Linda Rabe (Staff Contact: Bonnie Greiner, 586-3227)
- * 13. Authorize the Purchasing Agent to Dispose of Surplus Fire Engine No. 32 to the Spring Valley Volunteer Fire Department (Staff Contact: Chris Schroeder, 586-3161)
- * 14. Approve the Memorandum of Understanding Between the City of Milpitas and the Santa Clara Valley Transportation Authority for the C211 Wrigley Creek Project, and Approve the Encroachment Permit Agreement (Staff Contact: Fernando Bravo, 586-3328)

XX. ORDINANCE

15. Introduce Ordinance No. 238.3 to Repeal and Replace Title VIII, Chapter 5, of the Milpitas Municipal Code to Amend the City's Water Efficient Landscape Ordinance (Staff Contact: Kathleen Phalen, 586-3345)

XXI. RESOLUTIONS

- * 16. Adopt a Resolution Establishing New Senior Center Membership, Facilities Access, and Rental Fees and Approve a Coffee Kiosk Pilot Program (Staff Contact: Renee Lorentzen, 586-2786)
- * 17. Adopt a Resolution Approving an Application to Designate the Winsor Tank House as a City Cultural Resource (Staff Contact: Aaron Bueno, 586-3226)
- * 18. Adopt a Resolution Granting Final Acceptance of and Release of the Subdivision Improvement Bond for Centria East Condominiums, Project No. 3178, Tract No. 9773, Lot 2 (Staff Contact: Fernando Bravo, 586-3328)
- * 19. Adopt a Resolution Approving the Recommendation of a Parks and Recreation Services Healthy Vending Policy (Staff Contact: Aaron Bueno, 586-3226)
- * 20. Adopt a Resolution to Release Unclaimed Checks (Staff Contact: Dante Ong, 586-3132)

- * 21. **Adopt a Resolution Authorizing the Sole Source Purchase of Three Traffic Signal Cabinets from BRG Supply, LLC for the Not-to-Exceed Amount of \$35,065.97 (Staff Contact: Chris Schroeder, 586-3161)**
- * 22. **Adopt a Resolution Granting Initial Acceptance of and Reducing Performance Bond for Calle Oriente Park, Project No. 5087 (Staff Contact: Steve Erickson, 586-3301)**

XXII. BIDS AND CONTRACTS

- * 23. **Authorize the City Manager to Award and Execute a Construction Contract with the Lowest Responsible Bidder and Approve a Budget Appropriation for the Abbott Avenue Resurfacing, Project No. 4251 (Staff Contact: Steve Chan, 586-3324)**
- * 24. **Reject the Apparent Low Bid From ABSL Construction and Award the Construction Contract, Including Two Add Alternate Items, to AME Contracting Company for Park Renovation 2009 Pathways, Project No. 5089 (Staff Contact: Steve Erickson, 586-3301)**
- * 25. **Approve the Agreement with Western Pacific Signal, LLC for Consulting Services for Traffic Signal Controller and Advanced Traffic Management System Upgrade, Project No. 4248 (Staff Contact: Steve Chan, 586-3324)**
- * 26. **Approve a Contract Renewal for Excess Workers' Compensation Insurance (Staff Contact: Carmen Valdez, 586-3086)**
- * 27. **Approve the Purchase of Assorted Badger Water Meters from National Meter and Automation for \$54,194.51 (Staff Contact: Chris Schroeder, 586-3161)**
- * 28. **Approve Plans and Specifications and Authorize Advertisement for Bid Proposals for the Sewer Deficiency and Structural Correction Program Phase 6, Project No. 6073 (Staff Contact: Steve Erickson, 586-3301)**
- * 29. **Authorize the City Manager to Execute the Sixth Amendment to the Contract with the County of Santa Clara in the amount of \$171,277, and Sixth Amendments to the Contracts with Bateman and New Orient Restaurant in the Amount of \$71,775 and \$29,318 Respectively (Staff Contact: Renee Lorentzen, 586-2786)**
- * 30. **Authorize the City Manager to Execute a Contract with ACCO Engineered Systems for the Not-to-Exceed Annual Amount of \$61,236.80 for HVAC Maintenance and Repair (Staff Contact: Chris Schroeder, 586-3161)**
- * 31. **Authorize the City Manager to Execute Two Contracts with Fitness Instructors for the Annual Not-to-Exceed Amount of \$90,000 (Staff Contact: Aaron Bueno, 586-3226)**

XXIII. ADJOURNMENT

**NEXT REGULAR MEETING:
TUESDAY, AUGUST 3, 2010**

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:

Bicycle Pedestrian Advisory Commission (alternate)

Community Advisory Commission (alternate)

Emergency Preparedness Commission

Mobile Home Park Rental Review Board

Parks, Recreation & Cultural Resources Commission

Planning Commission (alternate)

Recycling & Source Reduction Advisory Commission (alternate)

Senior Advisory Commission (alternate)

Youth Advisory Commission

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. Hold a Public Hearing and Adopt a Resolution Approving the Housing Element General Plan Amendment and Negative Declaration (Staff Contact: Felix Reliford, 586-3071)

Background: At its meeting on June 16, 2009, the City Council reviewed and approved the conceptual General Plan Housing Element and Negative Declaration documents. These were then sent to State of California Department of Housing and Community Development (HCD) for its review and comments. After two rounds of responding to comments, HCD concluded that the Housing Element now complies with State Housing Element Law and when adopted and submitted to HCD will be certified as meeting all legal statutory requirements.

Many of the changes made as a result of the HCD's review were related to providing more explanations and additional information to support the facts and conclusions within the document. A sample of the types of changes is provided below:

- Demonstrate the affordability based on actual and anticipated sales price, or rent level on the affordable units required in progress for meeting the Regional Housing Needs Assessment (RHNA) affordability.
- Explain residential capacity for non-vacant site and mixed use zoning.
- Demonstrate the suitability of underutilized sites.
- Identify sites for zoning for a variety of housing types (e.g. Emergency Shelters).
- Describe potential constraints on development of housing, maintenance and improvements of housing for persons with disabilities.
- Provide additional information on the inventory of adequate housing sites for various types of housing and income levels.

The central component of the Housing Element is the Five-Year Implementation Plan found in Chapter VII. The Plan calls for amendments to the zoning ordinance to address special housing needs now required by State Law. Staff will prepare the necessary amendments for consideration by the Planning Commission and City Council next fiscal year. The Planning Commission considered the revised Housing Element at its meeting on April 28, 2010 and recommended the City Council adopt it.

Fiscal Impact: None.

Attachments:

- A. Resolution
- B. Housing and Community Development letter dated 2/11/10
- C. City of Milpitas General Plan Housing Element Draft dated 5/12/10

Recommendations:

- 1. Open the public hearing and take testimony, and move to close the public hearing.
- 2. Adopt a Resolution approving the Housing Element General Plan Amendment (GP09-0002) and Negative Declaration (EA No. 09-0009).

2. Hold a Public Hearing and Adopt Ordinance No. 66.3 Adopting the "City of Milpitas Standard Drawings, Specifications and Engineering Guidelines" for City Public Works (Staff Contact: Fernando Bravo, 586-3328)

Background: On June 1, 2010, the City Council introduced Ordinance No. 66.3, which provides for a new set of requirements for all public works projects constructed within the City. The requirements, entitled the “City of Milpitas Standard Drawings, Specifications and Engineering Guidelines” adopt by reference a number of national, state and industry standards and specifications.

Pursuant to state law, the City Council must first hold a public hearing and receive public comment on the new proposed drawings, specifications and engineering guidelines before adoption. No changes to the ordinance or the standards referenced therein have been made since the ordinance’s introduction. After receiving public comment, the City Council may take action on a second reading of Ordinance No. 66.3 and adoption.

Fiscal Impact: None.

Attachment: draft Ordinance No. 66.3

Recommendations:

1. Open the public hearing for comments, and move to close the hearing.
2. Waive the second reading of Ordinance No. 66.3.
3. Adopt Ordinance No. 66.3 adopting the “City of Milpitas Standard Drawings, Specifications and Engineering Guidelines.”

3. Hold a Public Hearing and Adopt a Resolution Approving Annual Engineer’s Report and the Levying of Assessment for Landscaping and Lighting Maintenance Assessment District No. 95-1, McCarthy Ranch (Staff Contact: Fernando Bravo, 586-3328)

Background: On May 18, 2010, the City Council adopted Resolution of Intention No. 7992 to levy annual assessments for the Landscaping and Lighting Maintenance Assessment District No. 95-1. The district services and maintains the public landscaping and additional lighting along North McCarthy Boulevard and the gateway feature on Ranch Drive. An annual public hearing is necessary to adopt the Annual Engineer’s Report to provide funds for the district.

The total assessment for the district in the Annual Engineer’s Report is \$276,676.44 for the 2010-11 fiscal year and is within the previously approved range of assessments.

Fiscal Impact: None.

Attachments:

- A. Resolution
- B. Annual Engineer’s Report Fiscal Year 2010-11

Recommendations:

1. Open the public hearing, receive any written protests, and hear testimony.
2. Close the public hearing.
3. Adopt a Resolution approving Annual Engineer’s Report, confirm diagram and assessment, and ordering levy of assessments for fiscal year 2010-11 for Landscaping and Lighting Maintenance Assessment District No. 95-1.

4. Hold a Public Hearing and Adopt a Resolution Approving Annual Engineer’s Report and the Levying of Assessment for Landscaping and Lighting Maintenance Assessment District No. 98-1, Sinclair Horizon (Staff Contact: Fernando Bravo, 586-3328)

Background: On May 18, 2010, the City Council adopted Resolution of Intention No. 7993 to levy annual assessments for the Landscaping and Lighting Maintenance Assessment District No. 98-1. The district services and maintains the public landscaping along Sinclair Frontage Road, Los Coches Creek, and Berryessa Creek abutting the Sinclair Horizon residential subdivision. An

annual public hearing is necessary to adopt the Annual Engineer's Report to provide funds for the district.

The total assessment for the district in the Annual Engineer's Report is \$35,846.74 for the fiscal year 2010-11, which is within the previously approved range of assessments and includes the application of the approved annual Consumer Price Index (CPI) escalation.

Fiscal Impact: None.

Attachments:

- A. Resolution
- B. Annual Engineer's Report Fiscal Year 2010-11

Recommendation:

1. Open the public hearing, receive any written protests, and hear testimony.
2. Close the public hearing.
3. Adopt Resolution approving Annual Engineer's Report, confirm diagram and assessment, and ordering levy of assessments for fiscal year 2010-11 for Landscaping and Lighting Maintenance Assessment District No. 98-1.

XVI. UNFINISHED BUSINESS

- * **5. Approve the Senior Center Entrance Vestibule Art Nominations (Staff Contact: Renee Lorentzen, 586-2786)**

Background: At the May 4, 2010 City Council meeting, the Council was presented with four Public Art Piece selections for the interior of the new Milpitas Senior Center. City Council approved the Lobby Fireplace, Lobby Wall and Hallway art pieces as presented.

City Council recommended and approved the Entrance Vestibule's piece with the following criteria: retain the method and media of the piece as presented and highlight significant Milpitas residents who have impacted the community in the piece, rather than anonymous faces.

Staff informed City Council that the change in subject matter would push back the installation of the Entrance Vestibule art piece to winter 2011. It will take 60 days from the date the artist receives pictures of the approved Milpitas residents to complete the piece.

Staff attended the Rules and Naming Subcommittee meeting on Friday, May 21, 2010 and received a recommendation that Milpitas City Councilmembers submit four names each, without duplication, to be incorporated into the Senior Center Entrance Vestibule Public Art Piece. For each name submitted, a recent photo and list of the individual's accomplishments and contributions to Milpitas will need to be made available to staff by either the City of Milpitas or an appropriate outside organization.

It is suggested that chosen persons be represented in the art piece in their senior years, if applicable, so that the subject matter and overall feeling of the piece is relevant to the Senior Center and its members. Nominations may be of significant persons both living and since passed.

The following suggested categories have been provided to assist City Council, if needed, when choosing citizens for nomination:

1. Lifelong Community Leaders
2. Influential Citizens in the formation of Milpitas
3. Founders of Community Organizations
4. Outstanding Elected Officials
5. Groundbreaking "Firsts" of Milpitas

Fiscal Impact: None.

Recommendation: Approve the new Senior Center Entrance Vestibule art nomination method and direct Mayor and Councilmembers to submit four names each without duplication for the public art piece.

XVII. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

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

RA2. Approval of Minutes – June 1, 2010

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

RA4. Review the Past Releases of Affordable Housing Units and Adopt a Resolution to Authorize Releasing the Restriction Agreements for Four Additional Housing Units (Staff Contact: Felix Reliford, 586-3071)

Background: This item is in response to the Vice Mayor's request for a review of the eleven properties that have been released of their affordable housing restrictions in conjunction with a request for authorization to release the restriction on four additional properties.

The downturn in the housing market has resulted in 25 owners of designated low and moderate income units notifying the Redevelopment Agency of their intent to sell their units. This notification starts a 90-day timeframe for staff to find a qualified buyer meeting the necessary income qualifications. If a buyer is not identified within this timeframe, the Agency has the option of purchasing the affordable unit or releasing it from the resale restriction agreement. To date, the Agency has authorized the purchase of ten of these units and the release of restrictions on eleven. Prior to making a recommendation to release a unit from affordability restrictions, staff reviews an appraisal of that unit or a similar unit to estimate its market value (assuming the affordability restrictions were lifted). The estimated market value of the eleven units, and the four additional units being proposed for release, has been at or below the original purchase of those units. A table has been provided in the Council's agenda packet detailing the original and current estimated pricing of these units.

Fiscal Impact: None.

Recommendation: Adopt a Resolution authorizing the release of the Resale Restriction Agreements for the four affordable units identified in the resolution.

RA5. Receive the Market Demand Study Update on the Milpitas Silicon Valley Conference Center and Provide Direction (Staff Contact: Diana Barnhart, 586-3059)

Background: On May 4, 2010, the City Council approved a consultant contract with Group 4 Architects for the proposed Milpitas Silicon Valley Conference Center at 540 and 570 Alder Drive. The first step in the process is the completion of a thorough Market Demand Study to determine the types of uses, other than a meeting room to seat more than 350 persons, which could be included in the proposed conference center. Group 4 partnered with Convention Sports and Leisure and Conventional Wisdom to conduct the Market Study and evaluate the findings. The Market Study involves interviews with local and regional hoteliers, trade show planners, and other conference center operators to develop an understanding of the full potential of a conference facility. In-mid-May, the Mayor hosted a meeting with hoteliers and the consultants to kick-off the effort and discuss the local market.

At the Council meeting, staff and Group 4 will make a presentation on the findings of the Market Study as work continues on the effort during the week of June 7. Initial findings show that

locally, hotel bookings have increased and many of the hoteliers report that all rooms are booked at least two to three days a week. Rates, however, have not recovered and still remain lower than they were prior to the economic downturn.

Upon completion of the Market Study, and if the City Council so directs, Group 4 will work with Conventional Wisdom to integrate the market demand results into a usable and viable conference facility as part of developing the building program. It is intended that the building program will be presented to the City Council Economic Development Subcommittee at its recently rescheduled August 2 meeting and, the Subcommittee's recommendation to the City Council on the next steps at the August 3 Council meeting.

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

Recommendation: Receive the Market Demand Study update on the Milpitas Silicon Valley Conference Center and provide direction to staff for further implementation.

***RA6. Authorize the Agency Executive Director to Execute a Contract to Purchase the Property Located at 230 North Main Street and Approve a \$6.8 Million Housing Fund Loan to the Agency's Project Fund and Budget Change Form (Staff Contact: James Lindsay, 586-3273)**

Background: Apton Properties, LLC, the owner of the 1.60 acre property located at 230 North Main Street, has offered to sell the property to the Redevelopment Agency for \$6.3 million. In addition to the land price, the owner is seeking \$500,000 reimbursement for in-lieu fees and improvements made to the property. The offered land price is supported by an appraisal of the property and the improvements costs are considered reasonable due to the additional value created for the property and the public benefit they provide. To complete the purchase, the Agency's Housing Fund will loan the \$6.8 million total purchase price to the Project Fund. This loan will have a twenty-year period to be repaid.

Fiscal Impact: The Housing Fund will loan the necessary funds to the Project Fund and a Budget Change Form was prepared to appropriate those funds to the Agency's FY 10-11 budget.

Recommendations:

1. Authorize the Agency Executive Director to execute a contract to purchase the property located at 230 North Main Street for a total price of \$6.8 million including reimbursable costs.
2. Approve a \$6.8 million loan between the Housing and Project Funds.
3. Approve the Budget Change Form.

***RA7. Adopt a Resolution Granting Final Acceptance of the Midtown North Main Street Streetscape Improvement Project, Phase 2, Projects No. 8165 and No. 8153, Federal Aid Project No. RPSTPLE 5314 (004) (Staff Contact: Erickson, 586-3301)**

Background: This project was initially accepted on June 16, 2009, and has passed the one-year warranty period. A final inspection of the installed public improvements has been made, and they were found to be satisfactory. The project provided a new pedestrian-friendly streetscape along North Main Street to support the Milpitas Public Library, County Medical Facility, newly completed parking garages, and other Midtown improvements.

Staff recommends that the Redevelopment Agency grant final project acceptance of the Midtown North Main Street Streetscape Improvements Project, Phase 2 Projects No. 8165 and No. 8153, and release of the contractor's bond.

Fiscal Impact: None.

Recommendation: Adopt a resolution of the Redevelopment Agency and the City Council granting final acceptance of the Midtown North Main Street Streetscape Improvements Project, Phase 2 Projects No. 8165 and No. 8153, and release of the contractor's bond.

RA8. Agency Adjournment

XVIII. REPORTS OF MAYOR, COUNCIL, AND COMMISSION

6. Consider Mayor's Recommended Appointment for the Alternate Member to the Planning Commission (Contact: Mayor Livengood, 586-3051)

Background: Mayor Livengood would like to request approval by the City Council of his recommendation for the alternate member of the Planning Commission.

Recommendation: Hear Mayor Livengood's recommendation and approve the alternate member to serve on the Planning Commission to a term that expires in December 2012.

*** 7. Consider Mayor's Recommendation for Re-appointment to the Library Advisory Commission (Contact: Mayor Livengood, 586-3051)**

Background: Mayor Livengood recommends that Marilyn Hay be re-appointed to the Library Advisory Commission to a term that expires in June 2012.

Recommendation: Consider the recommendation from Mayor Livengood, and move to re-appoint Marilyn Hay to the Library Advisory Commission to a term that expires in June 2012.

8. Review of the City Noise Ordinance (Contact: Councilmember Giordano, 586-3032)

Background: Councilmember Giordano requests a discussion of recent noise complaints and the tools used by staff in responding to such complaints.

Recommendation: Discuss and provide direction as necessary.

9. Discuss the Issue of Contracting Out for Fire Services (Contact: Councilmember Gomez, 586-3031)

Background: Councilmember Gomez requests to discuss with his colleagues the issue of contracting out services for the Milpitas Fire Department.

Recommendation: Hear report of Councilmember Gomez.

Emergency Preparedness Commission

*** 10. Requesting Approval of an Update to Commission Bylaws (Contact: Councilmember Polanski, 586-3024)**

Background: The Emergency Preparedness Commission recommends that the City Council approve changes to its bylaws in order to: (1) include one Commissioner who is from the industrial sector of the business community and (2) include one Commissioner who is a representative of a small business. The Commission further recommends deletion of any reference to the Chamber of Commerce.

These recommended changes adjust the language in the Emergency Preparedness Commission bylaws to better depict the current and future membership of the body. A copy of the proposed updated bylaws is included in the Council's agenda packet.

Recommendation: Approve the update to the Bylaws of the Emergency Preparedness Commission.

XIX. NEW BUSINESS

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

Background:

1. Season's Marketplace at Landess. The first new shopping center opening in many years took place on Wednesday, May 26 at Season's Marketplace that is anchored by Seafood City and US Bank. While much of the remodel of the former Home Depot site is complete, individual tenant construction is still underway with a bevy of stores geared to open in the near future. Waiting to join Seafood City and US Bank, which are already open, are well know Filipino businesses such as Beard Papa's, Chowking, Goldilocks, Filipino Desserts Plus, Max's of Manila, Tokyo Tokyo, Valerio's Tropical Bakeshop, Korean Garden and Yellow Cab Pizza. This is the first Filipino Shopping Center in Northern California for the developer, Ayala Land, Inc.
2. Development: The Business Resource Center, part of the streamlining process, is nearly ready to introduce to the public. This will be the one-stop center for all businesses with the intent that smaller businesses will find the business development process less cumbersome. The Planning Department reports that inquiries for potential housing development are steadily increasing.
3. Great Mall: Olive Garden restaurant has applied for its building permits. Olive Garden will be located in a site not previously occupied by a business, and is located directly behind Saks Off-Fifth Avenue. This will create a new active exterior and is envisioned to enliven this part of the Great Mall.
4. Employment Rates: Unemployment for April showed a slight decrease to 11.8% down from 12.4% in March. National statistics for May were released on Friday June 4, but the City would not have the cities breakdown until June 18.
5. Flextronics/SunPower: Staff will submit a proposal to SunPower and Flextronics during June for City Council consideration after the summer break.
6. Federal Earmark Status: Representatives of Soladigm met in Washington, D.C. with staff from Congressman Honda's office and were reassured that the City's application continues to have support. During late April, staff met with a representative of Senator Dianne Feinstein to promote the project so the Senator would be familiar with it once the House Appropriations recommendation goes to the Senate. Her staff member recently toured Milpitas to see the site and understand more fully all that is going on in the City.
7. Freeway Signs: The Planning Commission will consider a sign ordinance amendment for freeway signs at its meeting on June 9, along with a Development Agreement with Milpitas Auto Properties for a freeway sign on the Piercey Toyota site. At the Council meeting, staff will provide an update to Planning Commission action and also a schedule for implementation of signs for both Milpitas Auto Properties and McCarthy Ranch.
8. Economic Development Commission: Kris Stadelman, the new Executive Director of NOVA, made a presentation to the Economic Development Commission in April regarding NOVA's services. Much of the meeting was spent discussing how to expand the NOVA presence in Milpitas. To that end, staff coordinated a meeting with the Milpitas Adult School and NOVA to determine if classes can be held at the AS. Several Commissioners expressed interest in becoming trainers for the local meetings.

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

Recommendation: Receive the monthly economic development report from the Economic Development Manager.

* 12. **Approve Request for Installation of a Memorial Bench in Murphy Park Bench for Linda Rabe (Staff Contact: Bonnie Greiner, 586-3227)**

Background: At the May 21, 2010 Rules and Naming Subcommittee meeting, the Rabe Family requested for a bench to be placed in Murphy Park in memory of Linda Rabe.

It was unanimously approved by the sub-committee to seek City Council approval to install a bench in memory of recently passed City Commissioner, Linda Rabe. At the family's request the bench would be installed in Mrs. Rabe's neighborhood park, Murphy Park. The Rabe family has met with city staff and determined a location for the bench, however the exact bench dimensions and medium has not yet been selected.

The Rabe family informed the subcommittee that they will be funding the fabrication of the bench and appropriate memorial plaques associated with the bench, however has requested the City assist in pouring the foundation and installing the bench.

Staff will return to the City Council after the memorial bench has been selected by the Rabe family for final bench approval and full fiscal impact report.

Fiscal Impact: None.

Recommendation: Approve the request of a memorial bench in Murphy Park in memory of Linda Rabe.

* 13. **Authorize the Purchasing Agent to Dispose of Surplus Fire Engine No. 32 to the Spring Valley Volunteer Fire Department (Staff Contact: Chris Schroeder, 586-3161)**

Background: City Vehicle #32, a 1986 Superior Fire Pumper, has been decommissioned and retired from service by the Milpitas Fire Department. This vehicle served as a first line responding fire unit for 20 years and in a reserve capacity in the last five years. Typically the City's fire pumpers are assigned to first line service for 15 years and reserve status for five years. This vehicle is now 25 years old and well beyond its reasonable service life for a modern municipal fire department.

Staff recommends that this vehicle be donated to the Spring Valley Volunteer Fire Department. Spring Valley provides fire services for much of the unincorporated areas in the eastern Milpitas foothills. The City of Milpitas Fire Department and the Spring Valley Volunteer Fire Department have a cooperative mutual aid agreement that allows for it to assist Milpitas Fire Department with its personnel and equipment, when needed. Donating surplus firefighting equipment to the Spring Valley Fire Department allows the City to extend the return on investment as the City will continue to receive fire protection assistance for many more years from Spring Valley.

The estimated value of fire engine No. 32 is approximately \$10,000; consequently staff requests permission to dispose of the unit pursuant to section I-2-8.03 of the Municipal Code "Disposal of more than \$5,000."

Fiscal Impact: None. Fire engine No. 32 has been fully depreciated.

Recommendation: Authorize the Purchasing Agent to dispose of surplus fire engine No. 32 to the Spring Valley Volunteer Fire Department.

- * 14. **Approve the Memorandum of Understanding Between the City of Milpitas and the Santa Clara Valley Transportation Authority for the C211 Wrigley Creek Project, and Approve the Encroachment Permit Agreement (Staff Contact: Fernando Bravo, 586-3328)**

Background: The City has easement rights over and adjacent to Wrigley Creek for purposes of access and construction, maintenance, enlargement, and removal of storm water and flood control facilities. Santa Clara Valley Transportation Authority (VTA) wishes to restore and enhance a section of Wrigley Creek as part of its Wrigley Creek Improvement Project (C211 Project). The C211 Project would realign the existing channel and create a more natural flow in Wrigley Creek. The C211 Project restoration would also enhance the hydrologic and geomorphic functions of the creek such as sediment transport and deposition, fish and wildlife habitats, natural water quality improvement, and flood storage. Such restoration work would fulfill environmental mitigation measures required to offset environmental impacts arising from a separate VTA project, VTA's Freight Railroad Relocation/Lower Berryessa Creek Project (C210 Project) as approved in the "Wrigley Creek Improvement Project, Initial Study/Proposed Mitigated Negative Declaration," dated November 25, 2009, by VTA.

In return for granting VTA access rights and permitting the relocation and modification of City storm and flood control facilities as part of the C211 Project, the City will receive a grant of easement rights over the new alignment of Wrigley Creek identical in scope and nature to that previously held by the City. In addition, the City desires dredging of Wrigley Creek upstream and downstream from the C211 project site as further specified in the Memorandum of Understanding (MOU). Such dredging shall require the City to perform mitigation measures of its own.

The City will issue a major encroachment permit agreement to VTA for the C211 Project that will allow VTA and its contractors to use City easement rights to access Wrigley Creek to perform the work under the C211 Project contract. The contractor and its subcontractors will also be required to apply for and obtain an encroachment permit from the City for work performed within City right of way. VTA shall provide the necessary insurance and indemnity as specified in the MOU.

Fiscal Impact: None. VTA will pay for all costs associated with staff support for this project.

Recommendation: Approve the Memorandum of Understanding with VTA and the encroachment permit agreement for the C211 Wrigley Creek Project, subject to approval as to form by the City Attorney.

XX. ORDINANCE

15. **Introduce Ordinance No. 238.3 to Repeal and Replace Title VIII, Chapter 5, of the Milpitas Municipal Code to Amend the City's Water Efficient Landscape Ordinance (Staff Contact: Kathleen Phalen, 586-3345)**

Background: In 1993, the City Council adopted Ordinance No. 238 in response to the State's request for municipalities to regulate water conservation practices in landscaping. The City has amended this ordinance twice in subsequent years to make minor revisions. AB1881, the State Landscape Model Ordinance, required municipalities to adopt water-conserving landscape ordinances by January 1, 2010, or the State Ordinance would be deemed effective. Staff compared the State Model Ordinance requirements to the City's Landscape Ordinance No. 238 and found the City's ordinances at least as effective. Staff notified the State of this finding and submitted a copy of Ordinance 238 as required by the January 31, 2010 deadline.

In addition, staff participated in the Bay Area Water Supply and Conservation Agency (BAWSCA) model conservation work group to formulate a BAWSCA model outdoor water

conservation ordinance for the purpose of further conserving landscaping water throughout the BAWSCA service area. San Francisco Public Utilities Commission committed to an interim supply limitation of 265 million gallons per day (mgd) of water drawn from the Tuolumne River watershed until 2018 and has allocated 184 mgd of this to the BAWSCA agencies. BAWSCA has determined that, without additional conservation, water demands will exceed this interim supply limitation as soon as 2015.

Staff incorporated the BAWSCA model ordinance provisions that are applicable to the City to prepare this ordinance amendment. Only minor changes were necessary because the City's existing ordinance comprehensively addressed practicable landscape restrictions. Ordinance revisions increase flexibility to attain the desired water efficiency, regulate new residential landscaping greater than 2,500 square feet, and slightly reduce water waste allowances.

Ordinance No. 238 is applicable to:

1. All new and rehabilitated landscapes for public agency projects, private development, and developer-installed single family and multi-family projects with an irrigated area 2,500 square feet or greater requiring a building or landscape permit, plan check or design review, or requiring new or expanded water service; or
2. All new construction landscapes, homeowner-hired or provided in single and multi-family residential projects, with a total landscape area 2,500 square feet or greater requiring a building or landscape permit, plan check or design review, or new or expanded water service; or
3. All existing landscaping, one acre or more in size, using potable water for irrigation.

Fiscal Impact: None.

Recommendations:

1. Waive the first reading beyond the title of Ordinance No. 238.3.
2. Introduce Ordinance No. 238.3 to repeal and replace Title VIII, Chapter 5, of the Milpitas Municipal Code to amend the City's Water Efficient Landscape Ordinance.

XXI. RESOLUTIONS

- * **16. Adopt a Resolution Establishing New Senior Center Membership, Facilities Access, and Rental Fees and Approve a Coffee Kiosk Pilot Program (Staff Contact: Renee Lorentzen, 586-2786)**

Background: The new Milpitas Senior Center, opening in August 2010 will provide increased center space, new programming and amenities and additional private rental space to the community. Staff researched neighboring city senior centers and created a comparison of membership fees, benefits and auditorium rental rates to determine if the current Milpitas Senior Center fees are inline with other cities. It was discovered that the Milpitas Senior Center rates were significantly below average of neighboring, comparable cities.

Staff presented and received approval with the proposed membership, auditorium rates and pilot programs at the May 27, 2010 Neighborhood Services and Education Subcommittee meeting.

Current Senior Center Membership fees and benefits:

\$6/year – Resident
\$8/year – Non-Resident

Benefits (Residential/Non-Residential):

- o Access to all Senior Center free Drop-In programs, Classes, Trips
- o Mailed Bi-Monthly Newsletter to house
- o Trip Insurance

Current Sal Cracolice Auditorium rental rates:

<u>Resident:</u>	<u>Non Resident:</u>
\$20 – Application Fee	\$20 – Application Fee
\$500 – Deposit	\$500 – Deposit
\$100/hr – Hourly Rate	\$150/hr – Hourly Rate

The Neighborhood and Education Subcommittee unanimously voted to support the following proposed rates for the new Senior Center:

Proposed Membership Fees and benefits are:

\$12/year – Resident
\$30/year – Non-Resident

Benefits (Residential/Non-Residential):

- o Access to all Senior Center free Drop-In programs, Classes, Trips
- o Mailed Bi-Monthly Newsletter to house
- o Trip Insurance

Proposed New Senior Center Auditorium Rates:

<u>Resident:</u>	<u>Non Resident:</u>
\$20 – Application Fee	\$50 – Application Fee
\$1,000 – Deposit	\$1,000 – Deposit
\$250/hr – Hourly Rate	\$350/hr – Hourly Rate

- Fee waivers will not be available
- Requires two dedicated Building Attendants on site for entire rental (renter incurs cost)
- Rentals for adult majority attended events only (due to center’s open floor plan)
- 3 hour minimum rental

Two new amenities featured in the new Senior Center are the Fitness Room and the Coffee Kiosk area. City Staff presented two pilot programs for the Fitness Room and the Coffee Kiosk at the May 27, 2010 Neighborhood and Education Subcommittee meeting for approval.

Private rental rates for the new Senior Center classrooms will remain status quo at current Sal Cracolice classroom rental rates.

Senior Fitness Room Pilot Program (Per Visit Fee)

\$1.50 per visit (sold in groups of 5, 10, 15 or 20 visits)
Open Monday – Friday, 9 am – 3:30 pm

Fitness Room passes will be honored at both the Senior and Sports Center. Prices are consistent with Sports Center Senior Pass rates. The proposed per visit fee is set forth in the resolution (included in the Council agenda packet).

Coffee Kiosk Pilot Program

Open Monday – Friday 9:30 am – 1:30 pm

City staff also seeks authorization to engage a vendor for a six-month trial basis in the coffee and light food/snacks counter area of the new Senior Center (“Coffee Kiosk”). The Coffee Kiosk will feature coffee along with light and healthy snacks to be sold to Senior Center participants and the public at low cost. Break Time Vending Company, the current Parks and Recreation Services site vending company, is able to fully stock and staff the Kiosk with healthy beverage and snack options. It is the goal of Break Time Vending to have the Coffee Kiosk be successful and eventually donate 20 percent of its proceeds back to the Milpitas Senior Center. The proposed Kiosk Menu and pricing list is included in the agenda packet. Break Time would be

engaged solely on a trial basis. If the program proves successful, the service would be opened up to a competitive solicitation and awarded to the best service provider.

Staff will report back to the City Council after six months on the pilot program update.

Fiscal Impact: None.

Recommendations:

1. Adopt a Resolution establishing new Senior Center Membership, Facilities Access, and Rental Fees.
2. Authorize the City Manager to execute a vendor contract with Break Time Vending for the provision of coffee kiosk services on a six-month pilot program basis.

* **17. Adopt a Resolution Approving an Application to Designate the Winsor Tank House as a City Cultural Resource (Staff Contact: Aaron Bueno, 586-3226)**

Background: On January 4, 2010, the Milpitas Parks, Recreation and Cultural Resources Commission approved the preparation of an application to add the Winsor Water Tank House as an officially designated City cultural resource. Per Milpitas Municipal Code, such a designation would trigger certain local preservation and permitting requirements for the structure.

On April 5, 2010, the Parks, Recreation and Cultural Resources Commission held a duly noticed public hearing and recommended that the City Council and the Planning Commission consider designation of the structure as a cultural resource.

This recommendation was reviewed by the Planning Commission on May 12, 2010. The Planning Commission found that the designation of Winsor Tank House as a cultural resource would conform to the Milpitas General Plan, the Midtown Specific Plan, and local zoning requirements and recommended further consideration of the application by the City Council.

This matter is now ready for City Council action. Per Milpitas Municipal Code, the City Council must determine whether (a) the Winsor Tank House exemplifies or reflects special elements of the City's cultural, social, economic, political, aesthetic, engineering, or architectural history; (b) is identified with persons or events significant in local, state, or national history; and/or (c) embodies distinctive characteristics of a style, type, period, or method of construction, or is a valuable example of the use of indigenous materials or craftsmanship.

The Parks, Recreation and Cultural Resources Commission and the evidentiary materials included in the record support these findings and the designation of the structure as a cultural resource worthy of local preservation and protection.

Fiscal Impact: None.

Recommendation: Adopt a Resolution approving an application to designate the Winsor Tank House as a City cultural resource.

* **18. Adopt a Resolution Granting Final Acceptance of and Release of the Subdivision Improvement Bond for Centria East Condominiums, Project No. 3178, Tract No. 9773, Lot 2 (Staff Contact: Fernando Bravo, 586-3328)**

Background: On April 21, 2009, the City Council adopted Resolution No. 7859 approving the initial acceptance of the Centria East Condominiums, Tract No. 9773, Lot 2. The public improvements to serve the condominiums included: water system, sanitary sewer system, storm drain system, and street frontage (with associated lighting and sidewalk). Western Pacific Housing has completed all the one-year warranty period corrective work. A final inspection of

the public improvements has been made, and they were found to be satisfactory. Staff recommends the final acceptance of the project by Council.

Fiscal Impact: None.

Recommendation: Adopt a resolution granting final acceptance of and release subdivision improvement bond for Centria East Condominiums, Project No. 3178, Tract No. 9773, Lot 2.

*** 19. Adopt a Resolution Approving the Recommendation of a Parks and Recreation Services Healthy Vending Policy (Staff Contact: Aaron Bueno, 586-3226)**

Background: Milpitas Parks and Recreation Services Department promotes health and wellness within the community through a variety of recreational opportunities. The department provides recreational programs and activities for all ages, well-maintained parks and athletic facilities, a free drop-in Teen Center, and a full-service Senior Center. Parks and Recreation Services is committed to enhancing the quality of life for all residents of Milpitas.

An active lifestyle is an important component of healthy living. A healthy diet is equally vital. The growing problem of obesity, particularly childhood obesity, makes it imperative that the City take a policy stand on this issue. Most recent data shows that 52% of adults in Santa Clara County and 25% of children in Silicon Valley are overweight or obese. Countless health problems accompany obesity and unhealthy diets. Research shows that dietary factors and physical activity patterns are directly correlated with risk for heart disease, stroke, diabetes and other chronic diseases. Unhealthy diets and inactivity can reduce the quality of life for individuals.

In response to this growing crisis, Milpitas Parks and Recreation Services is recommending a Healthy Vending Policy for Parks and Recreation facilities. Vending machines located at the Community Center, Teen Center, Senior Center, and Sports Center would include primarily healthy food and drink choices. By providing healthy vending machine snack foods and beverages, the City would be providing residents with more nutritional food options and create a healthier environment for the public.

Fiscal Impact: None.

Recommendation: Adopt a Resolution approving the recommendation of a Parks and Recreation Services Healthy Vending Policy.

*** 20. Adopt a Resolution to Release Unclaimed Checks (Staff Contact: Dante Ong, 586-3132)**

Background: According to City of Milpitas' Standard Operating Procedure No. 26-1, which conforms to California Government Code Section 50055, unclaimed checks of less than \$15, or any amount if the depositor's name is unknown, which remain unclaimed for more than one year may be transferred to the General Fund by authorization of the City Council. A list of unclaimed checks of less than \$15, which remain unclaimed for more than one year, is included in the Council's agenda packet.

Fiscal Impact: The recommended action will increase General Fund revenues by \$194.70.

Recommendation: Adopt a resolution to transfer a total of \$194.70 unclaimed checks, per the list of checks generated by the City's Finance department, to the General Fund in accordance with Standard Operating Procedure No. 26-1.

*** 21. Adopt a Resolution Authorizing the Sole Source Purchase of Three Traffic Signal Cabinets from BRG Supply, LLC for the Not-to-Exceed Amount of \$35,065.97 (Staff Contact: Chris Schroeder, 586-3161)**

Background: On April 28, 2010, the City went out to bid on three traffic signal cabinets. The bid was sent to eight vendors on the City's vendor data base. In addition, the bid was advertised in the local newspaper, on the City website and on Public Purchase. Three bids were received but were rejected as none complied with the City's specifications and/or bidding requirements. The cabinets were customized by BRG Supply for the City of Milpitas over the last seven years. The City currently has twenty-five of this type of cabinets in service throughout the city. One of the three new cabinets is needed for immediate installation on new construction at the corner of Abel and Main Street; the other two are for inventory replacement. Any replacements must be an exact match and all parts must be interchangeable. Therefore, staff recommends that this purchase be sole source procurement pursuant to Municipal Code Section I-2-3.09.

Fiscal Impact: \$35,065.97. Funds for this purchase are available from the Streets Operating Budget for FY 2009-10.

Recommendation: Adopt a resolution authorizing the sole source purchase of three traffic signal cabinets from BRG Supply, LLC for the not-to-exceed amount of \$35,065.97.

- * 22. **Adopt a Resolution Granting Initial Acceptance of and Reducing Performance Bond for Calle Oriente Park, Project No. 5087 (Staff Contact: Steve Erickson, 586-3301)**

Background: The Council awarded the Calle Oriente Park to GSL Construction, Inc. on September 1, 2009. The project provides a complete renovation of the park and includes the installation of new play structures, walks, basketball court, drinking fountain, lighting, picnic area, shade structure, and landscaping and irrigation improvements. The project has been successfully completed, and staff recommends the Council adopt a resolution granting initial acceptance of the project and authorize the reduction of the contractor's faithful performance bond to \$38,557.66, which is 10% of the final contract value.

Fiscal Impact: None.

Recommendation: Adopt a resolution granting initial acceptance of the Calle Oriente Park, Project No. 5087, subject to a one year warranty period and reduction of the faithful performance bond to \$38,557.66.

XXII. BIDS AND CONTRACTS

- * 23. **Authorize the City Manager to Award and Execute a Construction Contract with the Lowest Responsible Bidder and Approve a Budget Appropriation for the Abbott Avenue Resurfacing, Project No. 4251 (Staff Contact: Steve Chan, 586-3324)**

Background: On September 15, 2009, the City Council approved the project plans and specifications for Abbott Avenue Resurfacing Project, which consists of Abbott Avenue (between Heath Street and Marylinn Drive) and Marylinn Drive (between Abbott Avenue and Main Street), and authorized the advertisement of the project for construction bid proposals. This project is funded in part by the federal American Recovery and Reinvestment Act of 2009 (ARRA.). The project includes roadway repairs and the installation of new asphalt pavement, American with Disabilities Act-compliant handicap ramps, and roadway markings. The Engineer's estimated construction cost is \$900,000.

Prior to advertisement of the project, a permit from the California Department of Transportation (Caltrans) is required to meet grant funding requirements of the ARRA Program. Caltrans approval of the permit and obligation of grant funds of an additional \$338,700 was received on May 5, and bid opening is scheduled for June. Due to the "shovel ready" emphasis of the ARRA Program, it is important to award this project as soon as possible. Therefore, staff recommends

that the Council authorize the City Manager to award and execute a contract to the lowest responsible bidder for the project during the month of July when the Council is in recess.

Fiscal Impact: This construction project will be 100% reimbursed by the ARRA program up to \$702,700. A budget appropriation in the amount of \$338,700 from the ARRA Program is required to award this project.

Recommendations:

1. Authorize the City Manager to award and execute a construction contract to the lowest responsible bidder for Abbott Ave. Resurfacing, Project No. 4251.
2. Approve a budget appropriation in the amount of \$338,700 from the ARRA Program to the Abbott Avenue Resurfacing Project No. 4251.

*** 24. Reject the Apparent Low Bid From ABSL Construction and Award the Construction Contract, Including Two Add Alternate Items, to AME Contracting Company for Park Renovation 2009 Pathways, Project No. 5089 (Staff Contact: Steve Erickson, 586-3301)**

Background: On April 20, 2010, the City Council approved the project plans and specifications and authorized the advertisement for construction bid proposals for Park Renovation 2009 "Pathways" Project No. 5089. The project provides for the repair or replacement of damaged sections of sidewalk, pathways, header board, and adjustment of adjacent utilities at the Dixon Landing, Pinewood, and Murphy Parks. The bid package also included two add alternate bid items for the replacement of the pathway and header board at the Robert E. Browne Park.

The Engineer's Estimate for the base bid project was \$89,000. A bid alternate estimate of \$10,875 for the replacement of the pathway and header board at the Robert E. Browne Park was also included with the Engineer's Estimate.

The project was advertised and ten sealed bid proposals were received on May 25, 2010. Bid proposals ranged from \$52,272.80 to \$266,575.00. The apparent low bid was submitted by ABSL Construction, Inc. in the amount of \$52,572.80; however, ABSL's bid was submitted with an inconsistency and error. Project staff and the City Attorney's office have reviewed this bid irregularity and determined that it is material and significant to the bid. The bid irregularity consisted of incorrectly providing a work item unit price and made other mathematical errors.

Accordingly, staff recommends that the City Council reject the low bid submitted by ABSL Inc. and award the project to the second low bidder AME Contracting Company, whose bid has been found to be responsive and responsible, for the amount of \$56,895.

Staff also recommends awarding the package with the two add alternate items since the low bid price allows the budget for these needed improvements. Awarding the project base bid with the two recommended alternate items brings the total construction contract to \$65,695, which is below the Engineer's Estimate and is within the project's cost plan and budget.

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

Recommendations: Reject apparent low bid from ABSL Construction Inc., and award a construction contract including two add alternate items to AME Contracting Company for the Park Renovation 2009 Pathways Project No. 5098 in the amount of \$65,695 including two add alternate items.

*** 25. Approve the Agreement with Western Pacific Signal, LLC for Consulting Services for Traffic Signal Controller and Advanced Traffic Management System Upgrade, Project No. 4248 (Staff Contact: Steve Chan, 586-3324)**

Background: In accordance with the City's consultant selection procedure, Western Pacific Signal, LLC has been selected to perform design services, traffic signal timing services, and traffic signal controller equipment installations for the Traffic Signal Controller and Advanced Traffic Management System Upgrade, Project No. 4248.

The City of Milpitas received a FY 2008-09 Transportation for Clean Air (TFCA) Program Manager grant amount of \$775,000 with \$165,000 local match to procure Traffic Management System upgrade services, traffic signal retiming services, and programming and replacement of the City's aging traffic signal controller inventory. Such services and equipment procurements would help reduce citywide vehicle delays and vehicle emissions.

Staff negotiated a scope and fee with Western Pacific Signal, LLC for these services and equipment procurements for the not to exceed amount of \$845,101.22, which is considered reasonable for the work.

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

Recommendations: Approve an agreement with Western Pacific Signal, LLC for Consulting Services for the Traffic Signal Controller and Advanced Traffic Management System Upgrade, Project No. 4248 for an amount not to exceed \$845,101.22.

- * **26. Approve a Contract Renewal for Excess Workers' Compensation Insurance (Staff Contact: Carmen Valdez, 586-3086)**

Background: The City carries excess workers' compensation insurance in accordance with state law. The City's insurance broker, Brown & Brown of California, was able to retain coverage through Safety National Casualty Corporation for fiscal year 2010-11. Last year, fiscal year 2009-10, the cost of the excess workers' compensation was \$118,089. This year, staff was quoted an overall rate decrease of 6.09%. The City's self-insured retention is \$1,000,000 for safety employees and \$750,000 for miscellaneous employees. The renewal premium for fiscal year 2010-11 is \$110,903 and is based on the City's payroll.

Fiscal Impact: None. There are sufficient funds allocated in the Human Resources Department FY 2010-11 budget.

Recommendation: Approve acceptance of National Safety Casualty Corporation for the City's excess workers' compensation insurance for FY 2010-11, authorizing the payment to Brown & Brown of California the premium rate of \$110,903.

- * **27. Approve the Purchase of Assorted Badger Water Meters from National Meter and Automation for \$54,194.51 (Staff Contact: Chris Schroeder, 586-3161)**

Background: On May 15, 2007, the Council approved Badger meters as the standard brand of water meter for the City of Milpitas, and approved National Meter and Automation as the sole source distributor of Badger meters. This current purchase will allow staff to complete customer orders and restock the supplies that have been depleted during FY 2009-10.

Fiscal Impact: The purchase is a programmed expense approved in the FY 2009-10 budget for Utility Funds.

Recommendation: Approve the purchase of assorted badger water meters from National Meter and Automation for the not-to-exceed amount of \$54,194.51.

- * **28. Approve Plans and Specifications and Authorize Advertisement for Bid Proposals for the Sewer Deficiency and Structural Correction Program Phase 6, Project No. 6073 (Staff Contact: Steve Erickson, 586-3301)**

Background: Staff completed plans and specifications for the Sewer Deficiency and Structural Correction Program Phase 6, Project No. 6073 in accordance with the approved five-year Capital Improvement Program (CIP). The project provides for the removal and replacement of sewer mains that have reached the end of their service life and have sags or other structural failures resulting in a high frequency of maintenance.

Project Phase 6 includes the replacement of sewer mains within the following areas of the City:

1. Erie Circle
2. San Petra Court
3. Whittier Street
4. Petaluma Court
5. Elmwood Correctional Facility (City owned structure)
6. Bixby Drive (Add Alternate Bid Item)
7. Canton Drive (Add Alternate Bid Item)

The Engineer's Estimate for the Base Bid work (items 1 through 5) is \$690,000. Included in the bid are two add alternates bid items (items 6 and 7) for the replacement of sewers on Bixby Drive, and Canton Drive. These add alternate items would be recommended for award if sufficient funding is available as determined after bid opening. The Engineer's Estimate for the two add alternates are \$115,000 and \$87,000 respectively. A copy of the plan title sheet is included in the Council's agenda packet and the complete set of plans and specifications are available for review in the office of the City Engineer.

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

Recommendation: Approve plans and specifications and authorize advertisement for bid proposals for Sewer Deficiency & Structural Correction Program Phase 6, Project No. 6073.

- * 29. **Authorize the City Manager to Execute the Sixth Amendment to the Contract with the County of Santa Clara in the amount of \$171,277, and Sixth Amendments to the Contracts with Bateman and New Orient Restaurant in the Amount of \$71,775 and \$29,318 Respectively (Staff Contact: Renee Lorentzen, 586-2786)**

Background: The City of Milpitas has contracted with the County of Santa Clara in implementing the Senior Nutrition Program since March 1978. This program serves seniors, sixty years and older 249 days per year, an average of 92 meals per day, for a total of 22,908 meals per year. The total budget for the FY 2010-11 Nutrition Program is \$171,277. The City of Milpitas and County of Santa Clara share the cost of the program, which is \$85,639 (50% each), as outlined in the County's contract. The City pays the entire budget of \$171,277 and the County reimburses the City its share of the program cost.

The City contracts provision of the meals, but the City provides transportation and program administration services for this program. Compass Group USA, Inc. doing business as Bateman has been catering the Senior Center Nutrition Program since July 1, 1998. Bateman provides hot meals in addition to salads and sandwiches five days a week at the Senior Center. Bateman will provide 16,603 meals for \$4.32 each per year, which will not exceed the approved budget amount of \$71,775 for FY 2010-11. The City of Milpitas has contracted with New Orient Restaurant since July 1, 2004 in offering Asian style meals twice a week for seniors. New Orient will provide 6,305 meals in a year at \$4.65 per meal, and will not exceed the approved budget amount of \$29,318.

Enclosed in the Council's packet are the following:

- 1) Sixth Amendment to the contract between County of Santa Clara and the City of Milpitas and budget summary attachment;
- 2) Sixth Amendment to the contract between Bateman and the City of Milpitas;

3) Sixth Amendment to the contract between New Orient and the City of Milpitas;

Fiscal Impact: None. Sufficient funds have been budgeted in the Parks and Recreation Services Department FY 2010-11 operating budget, as approved by the City Council on June 1, 2010.

Recommendations:

1. Authorize City Manager to execute agreement with County of Santa Clara for FY 2010-11 in the amount of \$171,277;
2. Authorize City Manager to execute agreement with Bateman Compass Group USA, for FY 2010-11 in the amount of \$71,775;
3. Authorize City Manager to execute agreement with New Orient Restaurant for FY 2010-11 in the amount of \$29,318.

- * **30. Authorize the City Manager to Execute a Contract with ACCO Engineered Systems for the Not-to-Exceed Annual Amount of \$61,236.80 for HVAC Maintenance and Repair (Staff Contact: Chris Schroeder, 586-3161)**

Background: ACCO Engineered Systems won the bid for the original installation of the HVAC system when City Hall was built. Since then, there has been in place an open ended contract for maintenance service. Due to the customized and proprietary nature of the software used in the HVAC control system, on February 17, 2009 Council adopted Resolution No. 7838 approving ACCO Engineered Systems maintenance and repair services as a sole source purchase pursuant to Municipal Code section I-2-3.09 "Sole Source Procurement". The current contract has expired. Staff recommends entry into a new one year contract with two one-year renewal options.

Fiscal Impact: None. This is a programmed expense approved in the FY 2010-11 budget for Facilities Maintenance.

Recommendation: Authorize the City Manager to execute a contract with ACCO Engineered Systems for the not-to-exceed Annual Amount of \$61,236.80 for HVAC maintenance and repair at Milpitas City Hall.

- * **31. Authorize the City Manager to Execute Two Contracts with Fitness Instructors for the Annual Not-to-Exceed Amount of \$90,000 (Staff Contact: Aaron Bueno, 586-3226)**

Background: The Milpitas Sports Center hosts over 50 fitness classes, wellness programs and personal training sessions each week attracting more than 84,000 community members seeking a healthy lifestyle.

To continue to provide outstanding service, and to expand services to the new Senior Center Fitness facility, staff is recommending authorization to execute two contracts with the following fitness instructors: (1) authorize one contract with Theresa Guerrero for Fitness Instruction for the annual not-to-exceed amount of \$48,000; and, (2) authorize one contract with Tatsiana Lahunovich for Fitness Instruction for the annual not-to-exceed amount of \$42,000.

Due to specific certifications and expertise of these two instructors, they have more clients and work more hours than other fitness instructors at the facilities.

Staff also requests that the City Manager be authorized to administratively add, change, or modify the fitness classes listed in each independent contractor's scope of work in order to meet community demand, so long as such scope of work amendments do not change the total contract not-to-exceed compensation amounts.

Fiscal Impact: None. Funds are available in the FY 2010-11 approved Parks and Recreation Services budget.

Recommendation: Authorize the City Manager to execute two contracts for Fitness Instructors for a combined not-to-exceed amount of \$90,000, with the delegated authority to the City Manager to add or modify the fitness classes listed in the contract scope of work, dependent upon class popularity and needs.

XXIII. ADJOURNMENT

**NEXT REGULAR MEETING:
TUESDAY, AUGUST 3, 2010**