



**JOINT MEETING OF MILPITAS CITY COUNCIL,
SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY,
AND ECONOMIC DEVELOPMENT CORPORATION
AGENDA
TUESDAY, OCTOBER 15, 2013**

**455 EAST CALAVERAS BLVD, MILPITAS, CA
6:00 P.M. (CLOSED SESSION) • 7:00 P.M. (PUBLIC BUSINESS)**

SUMMARY OF CONTENTS

- I. CALL TO ORDER/ROLL CALL by the Mayor (6:00 p.m.)**
- II. ADJOURN TO CLOSED SESSION**
 - 1. CONFERENCE WITH LEGAL COUNSEL**
Existing Litigation, per CA Government Code Section 54956.9
City of Milpitas v. City of San Jose, Santa Clara County Superior Court case no. 112CV233069
 - 2. CONFERENCE WITH LEGAL COUNSEL**
Existing Litigation, per CA Government Code Section 54956.9
County of Santa Clara, et al., v. Milpitas Economic Development Corporation, et al., Sacramento County Superior Court case no. 34-2013-80001436, and
Successor Agency to the Milpitas Redevelopment Agency, et al. v. John Chiang, et al., Sacramento County Superior Court case no. 34-2013-80001508
 - 3. CONFERENCE WITH REAL PROPERTY NEGOTIATOR**
Per CA Government Code Section 54956.8
Property: APNs 86-22-029, 030, Under negotiation: price and terms of payment
Person negotiating: Tom Williams
- III. CLOSED SESSION ANNOUNCEMENTS:** Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote or abstention of each member present
- IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)**
- V. INVOCATION (Mayor Esteves)**
- VI. APPROVAL OF COUNCIL MEETING MINUTES – October 1, 2013**
- VII. SCHEDULE OF MEETINGS – COUNCIL CALENDARS – October and November 2013**
- VIII. PRESENTATIONS**
 1. (a) Proclaim “*Hindu American Month*” for the month of October 2013
 - (b) Approve the Revised Memorandum of Understanding to Extend the Sister City Relationship between the City of Milpitas and Huizhou Municipality, China, for Five Years to October 15, 2018, and Conduct the Official Signing Ceremony with Vice Mayor Liu Guanxian, Vice Mayor Althea Polanski and Mayor Jose Esteves
 - (c) Special Presentation by the Dagupan (Philippines) City Delegation – City Hall Lobby
- IX. 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.

X. ANNOUNCEMENTS

XI. ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

XII. APPROVAL OF AGENDA

XIII. CONSENT CALENDAR (Items with asterisks*)

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

XIV. REPORTS OF OFFICERS

- * **2. Consider Mayor's Recommendations of Re-Appointments to Milpitas Commissions (Contact: Mayor Esteves, 408-586-3029)**
- 3. Consider Appointment of One Councilmember to County's Expressway Plan 2040 Policy Advisory Board (Contact: Mayor Esteves, 408-586-3029)**
- 4. Discussion of Possible Skate Park (Contact: Councilmember Montano, 408-586-3023)**

XV. NEW BUSINESS

- 5. Consider Approval of Amended Conceptual Design Plan, Maintenance Agreement, and Name for a New City Park Located at Great Mall Parkway and S. Abel Street (Staff Contact: Tiffany Brown, 408-586-3283)**
- * **6. Approve the City Council Meeting Schedule for the Year 2014 (Staff Contact: Mary Lavelle, 408-586-3001)**
- * **7. Consider a Request from the Milpitas Rotary Club to Waive All Fees for its Annual Pumpkin Patch to be held October 17-31, 2013 at 1331 E. Calaveras Blvd. Parking Lot (Staff Contact: Mary Lavelle, 408-586-3001)**

XVI. RESOLUTIONS

- * **8. Adopt a Resolution Approving an Agreement with Office Max for Citywide Purchase of Office Supplies Not-to-Exceed \$95,000 Annually through May 31, 2016 (Staff Contact: Chris Schroeder, 408-586-3161)**
- * **9. Adopt a Resolution Approving the First Amendment to the Letter of Understanding Between the City of Milpitas and the Association of Milpitas Battalion Chiefs (AMBC) (Staff Contact: Carmen Valdez, 408-586-3086)**
- * **10. Adopt a Resolution Approving the Letter of Understanding Between the City of Milpitas and the Milpitas Police Officers Association (POA) (Staff Contact: Carmen Valdez, 408-586-3086)**

- * 11. **Adopt a Resolution to Reclassify a Recreation Services Assistant IV to a New Classification of Case Manager (Staff Contacts: Carmen Valdez, 408-586-3086 and Stephanie Douglas 408-586-3226)**

XVII. AGREEMENTS

- * 12. **Approve Amendment No. 4 to the Consultant Services Agreement with RMC Water and Environment for an Additional \$300,000 for Support on the Silicon Valley Rapid Transit Program Berryessa Extension CIP No. 4265 and Various City Capital Projects, and Approve a Budget Appropriation (Staff Contact: Jeff Moneda, 408-586-3345)**
- * 13. **Approve Amendment No. 4 to the Consultant Agreement with Schaaf & Wheeler for an Additional \$20,000 for Storm Drain/Stormwater Program Documentation Review for the Silicon Valley Rapid Transit Program Berryessa Extension, Project No. 4265 (Staff Contact: Jeff Moneda, 408-586-3345)**

XVIII. JOINT MEETING OF CITY OF MILPITAS, SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY, AND ECONOMIC DEVELOPMENT CORPORATION

SA1. Call to Order/Roll Call by the Mayor/Chair

SA2. Approval of Agenda/Consent Calendar

SA3. Consider Adoption of Resolution Removing 10.89 Acres (“the McCandless property”) from the Standstill Agreement with Milpitas Oversight Board (MOB) and Establishing a Funding Mechanism for Adoption by the Milpitas Oversight Board to Ensure a School will be Constructed (Staff Contact: Tom Williams, 408-586-3050)

SA4. Authority Adjournment

XIX. ADJOURNMENT

**NEXT REGULARLY SCHEDULE COUNCIL MEETING
TUESDAY, NOVEMBER 5, 2013 AT 7:00 P.M.**

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public.

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

For more information on your rights under the Open Government Ordinance or to report a violation, contact the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035
e-mail: 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 after initial distribution of the agenda packet are available for public inspection at the City Clerk's office at Milpitas City Hall, 3rd floor 455 E. Calaveras Blvd., Milpitas and on the City website.

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

APPLY TO BECOME A CITY COMMISSIONER!

Current vacancies exist on the:

Community Advisory Commission (alternate)

Emergency Preparedness Commission

Public Art Committee (Alliance for the Arts member)

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

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

AGENDA REPORTS

XIV. REPORTS OF OFFICERS

- * 2. **Consider Mayor's Recommendations of Re-Appointments to Milpitas Commissions (Contact: Mayor Esteves, 408-586-3029)**

Background: Mayor Esteves recommends the following re-appointments:

Arts Commission/Public Art Committee:

Re-appoint Robin Hays as a regular member to a term that will expire in October 2016.

Re-appoint Tess Santos as a regular member to a term that will expire in October 2016.

Re-appoint Marsha Tran as Alternate No. 2 to a term that will expire in October 2015.

Recycling and Source Reduction Advisory Commission:

Re-appoint Steve Ybarra as a regular member to a term that will expire in October 2016.

Re-appoint Echo Arthur as a regular member to a term that will expire in October 2016.

Re-appoint Eddie Inamdar as Alternate No. 1 to a term that will expire in October 2015.

Recommendation: Receive Mayor's recommendations and move to approve re-appointments to Milpitas Commissions.

3. **Consider Appointment of One Councilmember to County's Expressway Plan 2040 Policy Advisory Board (Contact: Mayor Esteves, 408-586-3029)**

Background: Santa Clara County staff contacted the City Engineer to inquire if there is an appointed member of the City Council for the newly established Expressway Plan 2040 Policy Advisory Board. The first meeting of five is scheduled on Monday, October 28 at 6:30 PM. The PAB is anticipated to meet four times after that over the next 18 months, and consists of representatives from cities throughout the County. Meetings will be held at the County Government Center in San Jose and no stipend will be paid for attendance.

Recommendation: Mayor Esteves may seek a volunteer or he may choose to appoint one member of the City Council to serve as the City of Milpitas representative to the Expressway Plan 2040 Policy Advisory Board (PAB).

4. **Discussion of Possible Skate Park (Contact: Councilmember Montano, 408-586-3023)**

Background: Councilmember Montano would like to bring forward the discussion anew of a possible skate park in Milpitas for the benefit of the city's youth.

Recommendation: Hear report of Councilmember Montano.

XV. NEW BUSINESS

5. **Consider Approval of Amended Conceptual Design Plan, Maintenance Agreement, and Name for a New City Park Located at Great Mall Parkway and S. Abel Street (Staff Contact: Tiffany Brown, 408-586-3283)**

Background: The City Council approved a two-phased residential project at South Abel and Great Mall Parkway on August 16, 2005. It included an agreement that the developer would design and construct trails and parkland. Phase I of the project, known as Centria East, was built and completed in 2008 by D.R. Horton. The City used the park in-lieu fee amount from Centria East to purchase the half acre parcel that abuts Centria West for park use. In June of 2008, Lyon Milpitas, LLC ("Lyon") purchased the Centria West project, now known as Apex, from D.R. Horton. The parkland and open space required per the 2005 agreement for Apex is \$2,834.00 per unit or \$1,079,598.00 total. Lyon agreed to design, construct, and maintain the property that was

purchased by the City for a new public park. The maintenance agreement is included in the agenda packet. The design and construction costs will be deducted from the Centria West park in-lieu fee amount.

The proposed park is adjacent to the residential project, located at the southeast corner of the S. Abel and Great Mall Parkway intersection and is approximately 0.48 acres. Lyon presented an initial design that included a tennis court, tot lot, bocce ball court, barbecues with seating area, and a water feature along S. Abel Street, along with the amended agreement, including the maintenance of the park. The design of the park was presented to the Parks, Recreation and Cultural Resource Commission (PRCRC) on September 10, 2012, and received approval by City Council on September 18, 2012. Lyon now proposes a new Urban Plaza design that is passive and does not include a tennis court and other features listed. The park along Great Mall Parkway features a row of trees and a series of formal hedges designed to complement private seating areas along with a small fenced tot lot. The majority of the park is paved with 4'x4' tree wells and approximately 22 Red Maple trees that will be illuminated. An on-site PG&E easement precluded additional tree planting and improvements, but allows for the central pathway of the park, and areas for special tile artwork reflecting the historic significance of the park name. Bench seating and gaming tables will be dispersed underneath the Red Maple trees and near the center a large, up-lit, water fountain. PRCRC members recommended the new design for approval by the City Council on September 9, 2013.

At the same meeting, PRCRC Commissioners provided a list of historical names for consideration by the Council for the park name. Two names were considered:

- 1) **Jerry Arnold:** a rancher and farmer in the project development area who was a Milpitas Grammar School Trustee in the 1880s.
- 2) **Adlace Ashley:** the first agent for Sunset Telephone Company who brought first telephones to Milpitas in the 1890s and was a grocery store owner in the 1800s.

Fiscal Impact: None.

Recommendations: Move to approve the following, related to the new 0.48 acre park located at Great Mall Parkway and S. Abel Street:

1. Amended conceptual design plan removing a tennis court;
2. Maintenance agreement with Milpitas Centria West LLC for the long term maintenance of the newly constructed park at no cost to City;
3. Adopt "Jerry Arnold" as the name for the new park, as recommended by the Parks, Recreation and Cultural Resources Commission.

- * **6. Approve the City Council Meeting Schedule for the Year 2014 (Staff Contact: Mary Lavelle, 408-586-3001)**

Background: The Milpitas Mayor and City Council are requested to consider and adopt their schedule of meetings for 2014. Regarding the City Council's summer time meeting dates, it has been recent tradition to cancel both of the July regular Milpitas City Council meetings.

City staff has begun to prepare year-long calendars for next year and have inquired of the City Council as to what schedule will be followed in 2014. Staff requests that the City Council act on an affirmative meeting schedule for 2014 for its regular business meetings.

Recommendation: Move to approve the 2014 regular City Council meeting schedule, including the cancellation of the July 2014 City Council meetings.

- * **7. Consider a Request from the Milpitas Rotary Club to Waive All Fees for its Annual Pumpkin Patch to be held October 17-31, 2013 at 1331 E. Calaveras Blvd. Parking Lot (Staff Contact: Mary Lavelle, 408-586-3001)**

Background: The City Clerk received a “Donation or Fee Waiver/Reduction Request Application Form” from the Milpitas Rotary Club on October 2. The Rotary Club applied for a Special Event Permit from the Planning department, and it will be considered separately for approval by the Planning Commission Subcommittee. At this time, the club is requesting that the City Council waive all City fees charged for its annual Pumpkin Patch.

City Fees for Pumpkin Patch are:

Special Event permit application – Planning Dept.	\$250.00
Fire Marshal’s inspection permit + fees:	\$492.00
Electrical Permit from Building official	\$166.05

Fiscal Impact: \$20,000 was approved and included in the FY 2013-14 City budget for City Council’s Unallocated Community Promotions. If the current fee waiver of \$908.05 is granted, then \$15,591.95 would be the remaining balance for the fiscal year.

Recommendation: Consider the request from Milpitas Rotary Club and move to waive the fees for Planning, Fire, and Building fees totaling \$908.50 related to the annual Pumpkin Patch held October 17 - 31, 2013.

XVI. RESOLUTIONS

- * **8. Adopt a Resolution Approving an Agreement with Office Max for Citywide Purchase of Office Supplies Not-to-Exceed \$95,000 Annually through May 31, 2016 (Staff Contact: Chris Schroeder, 408-586-3161)**

Background: The City’s current contract with Office Max for the purchase of office supplies will expire on October 14, 2013. Staff recommends that the City Council approve a new contract with Office Max for the period from October 15, 2013 to May 31, 2016 in the amount not to exceed \$95,000 per year for a total contract amount of \$250,000. The City may enter into a “piggyback” agreement without going through its own competitive solicitation if the City makes all of the required findings, per Milpitas Municipal Code Section I-2-3.07 (Piggyback procurement). In general, the City must determine that solicitation conducted by another public agency meets the City’s Purchasing Ordinance and is in the City’s best interest.

The Office Max contract is based on a solicitation conducted by Oakland County, Michigan under the Public Sourcing Solutions/Office Max - America Saves program. The City of San Jose negotiated additional discounts of up to 70% on a list of 3,000 core products from the America Saves program. Because of our long standing customer relationship, Office Max has extended to the City of Milpitas, the same discounts enjoyed by San Jose, and which it has also extended to many other Bay Area cities. By piggybacking the aforementioned Oakland County, Michigan/ Office Max contract, Milpitas will receive the benefits of a nationally bid contract with volume pricing based on that contract and the additional discount of the San Jose core items either one of which exceeds what we could command as an individual city. Staff reviewed each of the findings required in the Municipal Code, and found the proposed agreement in full compliance with City requirements.

Fiscal Impact: None. Funding for this purchase is available from each department’s operating budget.

Recommendation: Adopt a resolution approving an agreement with Office Max for the period of October 15, 2013 to May 31, 2016 in the annual not-to-exceed amount of \$95,000 and total contract not to exceed amount of \$250,000.

- * **9. Adopt a Resolution Approving the First Amendment to the Letter of Understanding Between the City of Milpitas and the Association of Milpitas Battalion Chiefs (AMBC) (Staff Contact: Carmen Valdez, 408-586-3086)**

Background: At the August 6, 2013 City Council meeting, approval was granted in the form of a side Letter of Understanding regarding the coverage of additional duty chief work periods for Battalion Chiefs in excess of a standard fifty-six (56) hour work week for the period of March 28, 2013 to October 8, 2013. This item was brought forward due to staffing deficiencies in the rank of Battalion Chief in the Milpitas Fire Department and the request was to compensate at a straight time hourly rate for any additional hours worked beyond 56 hours. These positions will continue in their current status as “exempt” employees.

To date, the parties have not completed meet and confer negotiations over the terms of an initial Memorandum of Understanding (MOU), but would like to extend the interim Letter of Understanding regarding AMBC compensation to be in effect until June 30, 2014, or earlier if replaced by an approved MOU. A copy of the recommended Letter of Understanding is included in the Council’s agenda packet.

Fiscal Impact: None. Sufficient funds have been budgeted in the Fire Department FY 2013-14 operating budget.

Recommendation: Adopt a resolution approving the First Amendment to the Letter of Understanding between the City of Milpitas and the Association of Milpitas Battalion Chiefs to approve the changes defined in the Understanding, extending the LOU to June 30, 2014.

- * 10. **Adopt a Resolution Approving the Letter of Understanding Between the City of Milpitas and the Milpitas Police Officers Association (POA) (Staff Contact: Carmen Valdez, 408-586-3086)**

Background: The most recent Memorandum of Understanding with the Milpitas Police Officers Association (POA) expired on December 31, 2012. City representatives and representatives from POA met and conferred in good faith to negotiate a Letter of Understanding incorporating agreed changes. Agreement was reached with effective dates of January 1, 2013 to December 31, 2014. The Letter of Understanding is included in the Council agenda packet.

Fiscal Impact: Year One - \$418,000, and Year Two - \$1,180,000

Recommendation: Adopt a resolution approving the Letter of Understanding with the Milpitas Police Officers Association (POA) covering the period of January 1, 2013 through December 31, 2014.

- * 11. **Adopt a Resolution to Reclassify a Recreation Services Assistant IV to a New Classification of Case Manager (Staff Contacts: Carmen Valdez, 408-586-3086 and Stephanie Douglas 408-586-3226)**

Background: Periodically employee classifications are studied to review proper classification placement due to a change of assignment(s), organizational structure, and alignment with other agencies and/or other related changes or conditions.

The Recreation Division currently has two employees holding the position of Recreation Services Assistant IV. At the request of the Human Resources Director a reclassification study on the duties performed by one employee in the Recreation Services Assistant IV position was conducted by the Human Resources Department. The study included a review of job assignments and internal/external compensation comparisons. The incumbent currently performs duties equivalent to a Case Manager. The analysis revealed significant replication of duties between incumbent’s current job duties and that of a case manager with higher compensation in neighboring agencies. The current needs of the senior community demand the performance of a Case Manager to provide ongoing in-depth support with social service information and support.

Therefore, a reclassification to a newly created Case Manager position would provide appropriate updated job specifications and comparable salary compensation for actual duties being

performed. This action would create a new salary range, effectively adjusting the annual salary range for the affected employee from \$47,309.08 - \$57,504.20 to \$57,051.96 - \$71,200.08. Sufficient funds are available in the Department's budget. A review of this change was conducted with the appropriate bargaining unit. Included in the City Council's agenda packet is the updated job specification for your review.

Fiscal Impact: None. There are sufficient funds in the Recreation Services 2013-2014 budget.

Recommendation: Adopt a resolution to reclassify one Recreation Services Assistant IV position to a new classification of Case Manager effective the first full pay-period following City Council adoption.

XVII. AGREEMENTS

- * 12. **Approve Amendment No. 4 to the Consultant Services Agreement with RMC Water and Environment for an Additional \$300,000 for Support on the Silicon Valley Rapid Transit Program Berryessa Extension CIP No. 4265 and Various City Capital Projects, and Approve a Budget Appropriation (Staff Contact: Jeff Moneda, 408-586-3345)**

Background: On August 3, 2010, the City entered into a Master Agreement with the Santa Clara Valley Transportation Authority (VTA) for reimbursement of City work on the Silicon Valley Berryessa Extension project. The Master Agreement also allows reimbursement of consultant costs for design review services. On March 1, 2011, Council approved a Consultant Services Agreement with RMC Water and Environment (RMC), a California Corporation, to work on either the BART project directly or work on other capital improvement projects, thereby freeing staff to work on the BART project. On August 16, 2011, Council approved Amendment No. 1 to the agreement with RMC for a total agreement amount not to exceed \$420,068 with extended expiration date of June 30, 2012, for engineering support associated with the BART project and various city capital projects. On May 10, 2012, the parties entered into Amendment No. 2 to extend the expiration date to October 31, 2012 with no changes to compensation. On August 7, 2012, Council approved Amendment No. 3 to the agreement with RMC for a total agreement amount not to exceed \$807,116 with extended expiration date of October 31, 2013, for engineering support associated with the BART project and various city capital projects.

Staff is currently reviewing 95% level plans for several subprojects. It is necessary to extend the RMC agreement to provide additional funding for consultant support, and move the expiration date to October 31, 2014. It is cost-effective to use consultants for the BART project and to use staff for the City CIP projects. Staff recommends shifting \$85,000 from the CIP task to the BART task, add a task to allow for private job reimbursement, and increase the consultant agreement by \$300,000. This will bring the total value of the agreement to \$1,107,116. A budget appropriation from the previously approved Master Agreement is required.

Fiscal Impact: Budget appropriation of \$500,000 to CP 4265 is anticipated to cover various consultant charges through October 31, 2014. Costs are fully reimbursable under the Master Agreement with Santa Clara VTA. City capital projects have sufficient funding for the remaining support.

Recommendations:

1. Approve Amendment No. 4 to the agreement with RMC Water and Environment in the amount of \$300,000, for a total agreement amount not to exceed \$1,107,116 and to extend the expiration date to October 31, 2014 for engineering support associated with the BART extension, Project No. 4265, various city capital projects, and related private job reimbursement.
2. Approve a budget appropriation of \$500,000 for the various consultant expenses for the Valley Transportation Authority BART project.

- * 13. **Approve Amendment No. 4 to the Consultant Agreement with Schaaf & Wheeler for an Additional \$20,000 for Storm Drain/Stormwater Program Documentation Review for the Silicon Valley Rapid Transit Program Berryessa Extension, Project No. 4265 (Staff Contact: Jeff Moneda, 408-586-3345)**

Background: Santa Clara Valley Transportation Authority (VTA) continues to move forward on the design and construction of the Bay Area Rapid Transit (BART) extension project. The Milpitas BART station and parts of the BART alignment are within a floodplain. In addition, the work requires relocation of some City storm drain pipes and/or installation of additional storm drain pipes. On January 26, 2012, the City entered into a Consultant Services Agreement with Schaaf & Wheeler, a California corporation for professional engineering services for the BART extension project. On February 7, 2012, Council approved Amendment No.1 agreement with Schaaf & Wheeler for a total agreement amount not to exceed \$50,000 with extended expiration date of June 30, 2012. On May 11, 2012, Amendment No.2 extended the expiration dated to December 31, 2012 with no changes to compensation. On August 7, 2012, Council approved Amendment No.3 agreement with Schaaf & Wheeler for a total agreement amount not to exceed \$70,000 with extended expiration date of October 31, 2013. Staff is currently reviewing 95% level plans for several subprojects and has just learned that the City will be the lead reviewer for stormwater program requirements in lieu of the Regional Water Quality Control Board. It is necessary to extend the Schaaf & Wheeler agreement to provide additional funding for consultant support. Staff recommends increasing the Consultant Agreement by \$20,000 for a total not-to-exceed amount of \$90,000, and extending the expiration date to October 31, 2014.

Fiscal Impact: Consultant expenses and City staff labor are reimbursable under the VTA Master Agreement. This additional funding is included in the budget appropriation request included with the amendment to the Agreement with RMC on this Council agenda.

Recommendation: Approve Amendment No. 4 to the consultant agreement with Schaaf & Wheeler, a California corporation in the amount of \$20,000, for a total agreement amount of \$90,000 and to extend the expiration date to October 31, 2014 for Storm Drain/Stormwater Program Documentation Review, Project No. 4265.

XVIII. JOINT MEETING OF CITY OF MILPITAS, SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY, AND ECONOMIC DEVELOPMENT CORPORATION

- SA3. Consider Adoption of Resolution Removing 10.89 Acres (“the McCandless property”) from the Standstill Agreement with the Milpitas Oversight Board (MOB) and Establishing a Funding Mechanism for Adoption by the MOB to Ensure a School will be Constructed (Staff Contact: Tom Williams, 408-586-3050)**

Background: Adoption of the City of Milpitas Transit Area Specific Plan (TASP) and associated policies is an award-winning example of transit oriented in-fill development implementing smart growth legislation and policies advanced at the local, regional and state government levels. Development of the TASP and the ultimate plan incorporate input received from all stakeholders within the community. Working closely with Santa Clara County, Santa Clara Valley Transportation Authority (VTA), Bay Area Rapid Transit, private property owners and the general public, the TASP was developed to incorporate input, goals and objectives of varied and competing interests.

Build out of the TASP will achieve the desired amount of development and corresponding ridership necessary to, and used by, VTA in its federal funding application. The TASP was an integral component in ensuring the BART project would be constructed and that VTA would receive full funding approval from the Federal Transportation Commission.

Incorporated in the TASP is an array of land uses to redevelop the area around the future BART station as a walkable and livable mixed-use community. An important element of the TASP is the incorporation of primary infrastructure to accommodate the new residential and employment

population at build out. Infrastructure planned and approved by the City includes streets, water, sewer, storm drains, parks and a school.

As far back as 2005, the City recognized the population demands and need for development of a new school early in the planning process. At that time, through City Council direction, City staff presented to MUSD representatives several conceptual site locations within the TASP for a park and school, as well as population forecasts. The City recommended that MUSD commence planning and site acquisition for a new school. Unfortunately, MUSD communicated to the City that the district was not in a position to pursue a new school site.

As time moved forward, the City Council continued to direct City staff to pursue its vision for a new school and appropriate park sites. The City approached several land owners in the TASP to negotiate a land purchase for a both a new school and park. In total, 34 acres of parkland are required by law and the City adopted service levels to serve future residents of the TASP area. The City narrowed in on 14 acres of “L” shaped land owned by two separate property owners. The property is located on the east side of McCandless Drive, south of Penitencia Creek East Channel and north of Montague Expressway. The City Council directed staff to conduct a “due diligence” review of the property to determine its feasibility for a new school and park. This property is now referred to as the McCandless Property.

The City hired an architect to prepare feasibility assessments and conceptual designs incorporating the City Council’s vision of a joint use school and park with the notion that the new school could share the parkland for sports and physical education purposes given financial constraints and limited land availability. As a result, the City’s architect developed six concept plans indicating the McCandless Property was feasible for a joint use park and school. These concepts were forwarded to MUSD representatives and as a result, became convinced that the vision of the City Council would work.

In partnership with the City, MUSD hired an architect to work with the City’s architect to further study the feasibility for a new school. Concurrently, City staff began detailed negotiations with the land owners and presented fair share land acquisition costs to MUSD. Given that land values were declining as a result of the housing bubble burst and “Great Recession,” the City desired to act quickly in acquiring land and take advantage of the declining land costs. MUSD communicated to the City that it did not want to pursue acquisition of its portion of the land, but nonetheless had its architect design a K-8, two-story school concept on approximately six acres. All eight of the MUSD concepts were shared with the City Council and MUSD Board, who jointly agreed on a preferred option.

The agreed upon plan included a 5.7 acre school site with a gym and adjacent public park that would serve the outdoor physical fitness requirements of the school through a joint use agreement. As such, the City pursued acquisition of a 10.89 acre site using its sole resources and financial capacity. The City reached agreement with the underlying property owner in the fall of 2010 to acquire the land for \$2 million/acre – paying a total price of \$21,780,000 for the 10.89 acre site. The City of Milpitas Economic Development Corporation formalized the transaction on February 15, 2011 and holds current title to the land.

Changes in State Law and Impact to Development of the Site as Intended

In June 2011, as a result of extraordinary budget deficits faced at the state level and in need of a significant funding source to balance the state budget and pay state debt obligations, Governor Brown signed AB X1 26, dissolving all redevelopment agencies throughout the state of California. Basically, the act diverts property tax revenues from cities and allocates this revenue to the state. The state retains some of this revenue and reallocates the remaining to counties, school districts, water districts and other taxing entities. In Milpitas, this is an annual redistribution of property tax revenue from the Milpitas Redevelopment Agency to the State of California in the amount of \$39 million (per annum). Specifically, under the new law, MUSD now receives an annual redistribution of 40% of the diverted revenue or \$15.6 million each year.

Santa Clara County receives approximately 14% of the \$39 million or \$5.5 million from the City every year. The City is redistributing 16%, or \$6.2 million, of its original \$39 million. This leaves a deficit to the City of \$32.7 million a year. It should be noted that during these down economic times, the City reduced its staffing levels, implemented pension reform and re-negotiated labor contracts to cut costs and live within its drastically reduced means to balance the City's annual budget.

The AB X1 26 tax diversion law became effective five months after the Milpitas Economic Development Corporation (MEDC) acquired the McCandless Property. The law granted the state and Santa Clara County the authority to conduct an audit of the City of Milpitas Redevelopment Agency to determine its obligated debt requirements and the amount of property tax necessary to fulfill its contractual obligations entered into prior to the law being signed. The law also conceived another level of governance by creating Oversight Boards. Each local entity is required to report to these new Oversight Boards its debt obligations. The Oversight Boards are charged with verifying the previous financial commitments of the defunct redevelopment agencies and either approving or denying property tax allocation payments of these outstanding debts. Again, as a result of these audits (conducted throughout the state as well as in the City of Milpitas), the state realized it had over-estimated the amount of revenue it would receive as a result of AB X1 26 and continued to suffer a significant budget shortfall.

In June 2012, a year and a half after the MEDC acquired the McCandless property, Governor Brown signed into law a second redevelopment dissolution law that retroactively seeks tax revenue from cities even though they had already committed this revenue and entered into agreements to pursue local projects - such as the park and school planned for the McCandless Property in the City of Milpitas. This retroactive law, known as AB 1484, in essence purports to make the McCandless land acquisition by the Milpitas Economic Development Corporation illegal. It should be noted that at the time of the McCandless purchase, no such law existed and it is the retroactive provisions used by the state and Santa Clara County to claim the MEDC acquisition of the park and school land an illegal use of tax dollars. There is no possible way of knowing at the time of the agreement to purchase the property that a future law would have attempted to make the transaction illegal.

Santa Clara County, realizing a significant windfall in annual revenue from the redistribution of local property taxes, positioned itself to work with the state against local municipalities to unwind as many local commitments as possible in order to capture more annual tax revenue and help solve the state's budget problems. As a result of this havoc created by the state and the overly aggressive and unfair implementation by the County to "clawback" financial commitments by Milpitas prior to June 11, 2011, the City had no choice but to litigate the matter in the interest of the local taxpayers and community needs to ensure public projects could be built as envisioned prior to the law being enacted.

As a result, the \$21.7 million used to purchase the McCandless property for a park and school is tied up in litigation due to the retroactive provisions of the law and Santa Clara County's desire to "clawback" this revenue for redistribution. In order to prevent additional litigation, the City and the Oversight Board entered into a Standstill Agreement while the lawsuits make their way through the courts. The Standstill Agreement freezes any ability to sell the McCandless site or significantly develop it for a school and park while the agreement is in force and effect.

Current Disposition of McCandless Land:

As previously noted, the goal of developing a park and school on the McCandless Property has been a vision of the City Council for several years. The City was recently approached by MUSD as it is now interested in acquiring the land needed for a new school. MUSD has offered to purchase the entire site at \$2 million an acre, stating this was the MEDC purchase price and that MUSD was being fair by keeping the MEDC whole. All prior negotiations and understandings to use the property for a joint school and park site were ignored by MUSD.

The problem with the offer from MUSD is that any funds received by MEDC for the purchase of the McCandless Property will be required by new law (AB X1 26 and AB 1484) to be transferred

to the State of California away from the MEDC for redistribution to Santa Clara County, MUSD and other taxing entities within the County. Milpitas would receive only \$3.4 million and most of that would have to be deposited in its Park In Lieu Fund. This is not acceptable, as the City must continue to pay for other services such as street maintenance, police and fire protection.

Given the complexities and the desire to keep Milpitas' local dollars local, it is prudent to agree with the MOB and remove the McCandless property from the Standstill Agreement so that a proper and fair agreement can be reached by all parties for the use of the site for a park and school. The City would like to work with MUSD officials, who have communicated that they do not have funding to actually build a school. Perhaps together, the City and District could build a park and school on the McCandless Property as that is in the best interests of the Milpitas community and the greater Santa Clara County and South Bay communities.

Fiscal Impact: A potential loss of local revenue in the amount of \$18 - \$34 million.

Recommendation: to adopt the proposed resolution removing the McCandless property from the Standstill Agreement and direct staff to work with the Milpitas Unified School District, Santa Clara County and the Oversight Board to develop a fair and economically viable park and school on the McCandless property in the Transit Area.

XIX. ADJOURNMENT

**NEXT REGULARLY SCHEDULE COUNCIL MEETING
TUESDAY, NOVEMBER 5, 2013 AT 7:00 P.M.**