



**MILPITAS CITY COUNCIL AGENDA**  
**TUESDAY, FEBRUARY 4, 2014**  
**455 EAST CALAVERAS BOULEVARD, 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 LABOR NEGOTIATORS - COLLECTIVE BARGAINING**  
Pursuant to California Government Code Section 54957.6. City Negotiator: Tom Williams  
Employee Groups: International Association of Fire Fighters (IAFF), Mid-management and Confidential Unit, and Professional and Technical Group (ProTech)  
Under Negotiation: Wages, Hours, Benefits, and Working Conditions
  - 2. CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION**  
Pursuant to California Government Code Section 54956.9(a)  
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 LEGAL COUNSEL, EXISTING LITIGATION**  
Pursuant to California Government Code Section 54956.9(a)  
City of Milpitas v. City of San Jose, Santa Clara County Superior Court case no. 112CV233069
- 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 – January 21, 2014**
- VII. SCHEDULE OF MEETINGS – COUNCIL CALENDAR – February 2014**
- VIII. PRESENTATIONS**
  - Recognition of the Nelson Family for its outdoor holiday decorations at Christmas time
  - Proclaim “*Black History Month*” for the month of February 2014
- IX. PUBLIC FORUM**

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

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- X. ANNOUNCEMENTS
- XI. ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS
- XII. APPROVAL OF AGENDA
- XIII. CONSENT CALENDAR (Items with asterisks\*)

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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.

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XIV. PUBLIC HEARING

- 1. **Hold a Public Hearing and Consider Certification of Final Environmental Impact Report, General Plan Amendments for Freeway Corridor Overlay and Development Approvals for New Indoor Mall and Hotel Located at 11-111 Ranch Drive (“Pacific Mall and Hotel Project”)** (Staff Contact: Sheldon Ah Sing, 408-586-3278)

XV. UNFINISHED BUSINESS

- \* 2. **Receive the Odor Control Report Covering a Two Month Period in 2013-14** (Staff Contact: Jeff Moneda, 408-586-3345)

XVI. REPORTS OF MAYOR AND COMMISSION

- \* 3. **Accept Mayor’s Recommendation for Reappointment to Senior Advisory Commission** (Contact: Jose Esteves, 408-586-3029)

Library Advisory Commission

- \* 4. **Consider Approval to Allocate \$3,600 to the Milpitas Library 3<sup>rd</sup> Annual Essay Contest and the Related Budget Change Requested by the Library Advisory Commission** (Staff Contact: Sheldon Ah Sing, 408-586-3278)

XVII. NEW BUSINESS

- 5. **Receive Financial Status Report for the Six Months Ended December 31, 2013** (Staff Contact: Emma Karlen, 408-586-3145)
- \* 6. **Approve FY 2013-14 Mid-Year Budget Appropriations for Operating Budget** (Staff Contact: Emma Karlen, 408-586-3145)
- \* 7. **Receive City of Milpitas Investment Portfolio Status Report for the Quarter Ended December 31, 2013** (Staff Contact: Emma Karlen, 408-586-3145)

XVIII. ORDINANCE

- \* 8. **Waive the Second Reading and Adopt Ordinance No. 26.4 Updating City Expenditure Ratification Process Per State Law** (Staff Contact: Emma Karlen, 408-586-3145)

XIX. RESOLUTION

- \* 9. **Adopt a Resolution to Approve a Non-Exclusive Collection, Transportation, and Recycling Agreement with Orlando De La Cruz doing business as North Cal Hauling (Staff Contact: Jeff Moneda, 408-586-3345)**

**XX. AGREEMENT**

- \* 10. **Approve Amendment No. 4 to Contract with Jarvis, Fay, Doporto & Gibson for Attorney Services Relative to Newby Island Landfill Litigation (Staff Contact: Michael Ogaz, 408-586-3040)**

**XXI. ADJOURNMENT**

**NEXT REGULARLY SCHEDULE COUNCIL MEETING  
TUESDAY, FEBRUARY 18, 2014 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](mailto: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](http://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, 3<sup>rd</sup> 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](http://www.ci.milpitas.ca.gov/government/council/agenda_minutes.asp) (select meeting date)

**APPLY TO SERVE ON A CITY COMMISSION**

Current vacancies exist on the:  
*Recycling and Source Reduction Advisory Commission*  
*Sister Cities Commission*  
*Telecommunications Commission*

Commission application forms are available online at [www.ci.milpitas.ca.gov](http://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](mailto: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. PUBLIC HEARING

- 1. Hold a Public Hearing and Consider Certification of Final Environmental Impact Report, General Plan Amendments for Freeway Corridor Overlay and Development Approvals for New Indoor Mall and Hotel Located at 11-111 Ranch Drive (“Pacific Mall and Hotel Project”) (Staff Contact: Sheldon Ah Sing, 408-586-3278)**

**Background:** The McCarthy Ranch Marketplace (“Marketplace”) represents a key gateway location of the City of Milpitas. The Marketplace is approximately 68 acres in size located at the junction of two freeways (State Route 237 and Interstate 880). The commercial center is owned by different entities but functions as one commercial center. The center includes Wal-Mart, a number of “big box” commercial outlets, restaurants and services. The center was constructed in the 1990s and represents approximately 593,000 square feet of floor area, making the Marketplace second in commercial/retail square footage to the Great Mall.

The 25.1 acre portion of the center that includes Best Buy and Ross has seen decline in recent years with the closure of Borders and other stores. The property was sold in 2012 to TMS McCarthy, Inc. with the vision to renovate the site into a new indoor mall destination with a hotel. The following entitlements are requested for consideration by the City: General Plan Amendment (for new Overlay), Zoning Amendment (for new Overlay), Site Development Permit (for site and architectural review and sign program), Conditional Use Permit (for arcade, live entertainment and tentative map), Tentative Map (for establishing commercial condominium spaces) and Variance (for signs).

**Project Description:** The proposal includes the demolition of a portion of the buildings onsite (151,820 square feet); the creation of a single level of underground parking (835 spaces); the construction of a two level indoor mall (284,587 square feet) and a phased proposal for a 240 room hotel (171,959 square feet). In addition, a sign program is proposed, which includes a request to exceed the maximum sign area allowed for the site (by 1,230 square feet). The total net increase in floor area is 304,726 square feet, including the hotel space.

The General Plan and Zoning Code currently authorize a maximum permitted floor area ratio of 0.5. Because the project proposal includes floor area ratio for the site of 0.52, exceeding the maximum currently permitted by the General Plan and Zoning Code, General Plan and Zoning Amendments are proposed in the form of an overlay district that would allow the extra square footage. Additionally, a citywide freeway corridor overlay is also proposed to allow other properties within 300 feet of a freeway to request an increase in floor area ratio of up to twenty percent (20%) above the maximum permitted under the General Plan and Zoning Code. The mall itself does not include any anchor stores, but rather a number of small shops owned individually through a condominium arrangement. This is a unique concept in the area; however, it is modeled after a successful project in Toronto developed by the same group.

An Environmental Impact Report (EIR) was prepared for the project in accordance with the California Environmental Quality Act and describes the project’s impacts on the environment as well as project alternatives. The EIR describes potentially significant environmental impacts to Transportation, Air Quality, Biological Resources, Hazards and Hazardous Materials, Noise and Cumulative Impacts caused by the implementation of the Project. The Air Quality impact is a temporary impact and all but two transportation impacts are mitigated to level of insignificance. Those impacts not mitigated require overriding consideration by the Council based on public benefit factors that the project will have in light of the impacts to the environment. A Mitigation Monitoring Reporting Program has been prepared for the project and included in the report packet. Detailed analysis of the EIR is included in staff’s report to the Planning Commission, the Project’s EIR and is part of the Council packet.

**Project Analysis:** The proposed project renovates a major portion of the McCarthy Ranch Market Place. The proposed site plans, building design, and landscape improvements both compliment and upgrade the neighboring communal uses. Replacement of the aging 151,820 square feet of big box retail with 284,587 square feet and a 12-story, 240 room hotel provides substantial public benefit in the form of additional sales tax, transit occupancy tax, small business development, and an iconic landmark gateway presence for the City of Milpitas. Findings are made for the project identifying how the project is consistent with the City's adopted plans. The Planning Commission adopted a resolution on January 8, 2014, recommending project approval. Detailed analysis of the project is included in staff's report to the Planning Commission and is part of the Council packet. (See January 8, 2014 staff report and meeting minutes).

**Fiscal Impact:** None to the City's General Fund as proposed.

**Attachments:**

- 1-AA. Resolution Regarding Citywide General Plan Amendment
- 1-A. Resolution Regarding Final Environmental Impact Report
- 1-B. Resolution Regarding Project Approval
- 1-C. Ordinance No. 38.812 (draft)
- 1-D. Project Plans (3 sections attached in front of binder)
- 1-E. Applicant Letter – TMS McCarthy, Inc.
- 1-F. Transportation Impact Analysis
- 1-G. Final and Draft Environmental Impact Reports (attached in back of binder)
- 1-H. Comment Letter and Staff Responses
- 1-I. Planning Commission Meeting Minutes – 01/08/2014
- 1-J. Planning Commission Staff Report – 01/08/2014

**Recommendations:**

1. Upon conclusion of any public testimony, move to close the public hearing.
2. Adopt a Resolution approving General Plan Amendment No. GP13-0001 to create a Citywide Freeway Corridor Overlay.
3. Adopt a Resolution certifying the Final Environmental Impact Report for the Pacific Mall and Hotel Project in accordance with the California Environmental Quality Act of 1970, as amended and state and local guidelines implementing CEQA.
4. Adopt a Resolution approving General Plan Amendment No. GP13-0001, Site Development Permit No. SD13-0001, Conditional Use Permit No. UP13-0001, Tentative Map No. MT13-0001, and Variance No. VA13-0001, subject to conditions of approval for the Pacific Mall and Hotel Project located at 11-111 Ranch Drive.
5. Following a reading of the title by the City Attorney, move to waive the first reading beyond the title of Ordinance No. 38.812.
6. Introduce Ordinance No. 38.812 amending the Zoning Code to create implementing guidelines for the Citywide Freeway Corridor Overlay and amending the zoning map for the Pacific Mall and Hotel project.

**XV. UNFINISHED BUSINESS**

- \* 2. **Receive the Odor Control Report Covering Two Month Period in 2013-14 (Staff Contact: Jeff Moneda, 408-586-3345)**

**Background:** The odor reporting timeframe for this period was extended in order to capture more data for the Council's review. The last odor update was provided in December 2013. However, due to the early submittal date, limited data could be presented to the Council in January 2014, so the updated report was deferred to this time.

From November 15, 2013 through January 16, 2014, the Bay Area Air Quality Management District (BAAQMD) received twenty-four odor complaints originating in Milpitas. Eleven complaints identified a garbage-related odor, three identified a sewage-related odor and ten did

not identify an odor source. As of the last Council update, the City's odor reporting website has received forty reported complaints.

**Recommendation:** Receive the odor report covering a recent two-month period.

## XVI. REPORTS OF MAYOR AND COMMISSION

- \* 3. **Accept Mayor's Recommendation for Reappointment to Senior Advisory Commission (Contact: Jose Esteves, 408-586-3029)**

**Background:** Mayor Esteves recommends the following:

Senior Advisory Commission:

Reappoint Estrella Gilana as a regular member to a term that will expire in December 2015.

**Recommendation:** Receive Mayor's recommendation and move to reappoint Estrella Gilana on the Senior Advisory Commission.

### Library Advisory Commission

- \* 4. **Consider Approval to Allocate \$3,600 to the Milpitas Library 3<sup>rd</sup> Annual Essay Contest and the Related Budget Change Requested by the Library Advisory Commission (Staff Contact: Sheldon Ah Sing, 408-586-3278)**

**Background:** Library Advisory Commission requested financial assistance of \$3,600 from the City Council for the annual essay writing contest at the library. This is a special project of the Commission in cooperation with the Milpitas Public Library to promote awareness on the importance of the library and literacy in general. The financial assistance will be used to provide prizes, participants' gifts, and event supplies. This year, the Library Advisory Commission is planning for an on-the-spot essay writing contest to be held on April 19, 2014 at the Milpitas Public Library in celebration of National Library Week. Participants will write the essays at the event and be judged on the same day. Judges would include language arts teachers from Milpitas schools. Contest winners will be awarded a Kindle Fire reading device and each participant up to 200 maximum will also receive a water bottle. If the City Council approves this request, staff recommends that in lieu of using the Council's Community Promotions budget, the financial assistance be funded by the 2% Transient Occupancy Tax (TOT) Library Fund.

**Fiscal Impact:** \$3,600, and sufficient funding is available in the 2% TOT Library Fund for this request.

**Recommendation:** Per request of the Milpitas Library Advisory Commission, approve allocation of \$3,600 to the Milpitas Public Library for the third annual essay contest and approve the related budget change form (included in the agenda packet).

## XVII. NEW BUSINESS

- 5. **Receive Financial Status Report for the Six Months Ended December 31, 2013 (Staff Contact: Emma Karlen, 408-586-3145)**

**Background:** As of December 31, 2013, the General Fund received approximately \$22.6 million in total revenue. This amount is \$0.4 million more than the revenues received for the same period in FY 2012-13, primarily due to increased transient occupancy tax revenue, increased building and fire permit and plan check revenues, and increased property tax revenue. Based on trend analysis and updated information received to date, some of the major revenue categories have been revised to exceed budget. Overall, staff expected the General Fund revenues to be about \$2.3 million above budget.

Transient Occupancy Tax revenue (“TOT”) is expected to exceed budget by about \$1.1 million or 18%. Building and Fire permit and plan check fees are expected to exceed budget by \$984,000, due to increased building activities. Property tax revenue is expected to exceed budget by \$727,000 due to recovery of the housing market and increased assessed values of real properties in general.

Revenues that experienced shortfalls compared to the budget are sales tax revenues, fines and forfeitures, and charges for services. Sales tax revenue is revised to be below budget by \$473,000. due to unexpected decrease in the office equipment economic segments. Overall sales tax revenue decrease is about 2% below budget. The decrease in charges for services is related to private job revenues. Although development activities increased over last year, private job revenues were over estimated by about \$250,000. Fine and forfeitures are not major revenues of the City and are typically not easy to predict.

Overall, City departments’ expenditures for the first six months were on track with the budget at about 48.3%. At mid-year, General Fund personnel costs were at 49.1% of the budget while non-personnel costs were under budget by about 5%.

**Fiscal Impact:** None.

**Recommendation:** Receive financial status report for the six months ended December 31, 2013.

\* **6. Approve FY 2013-14 Mid-Year Budget Appropriations for Operating Budget (Staff Contact: Emma Karlen, 408-586-3145)**

**Background:** To maintain conformity with the City’s budget policy that any additional appropriations to a department’s budget or re-appropriation of monies from one fund to another must be approved by the City Council, staff submits the budget change form and justification memoranda from the requesting departments for review and consideration by the City Council.

Necessary budget adjustments include the following:

- 1) Increase the budget appropriation for the Information Services Department by \$15,000 to purchase new and additional tablets, PCs and software to be used by the staff in the Planning & Neighborhood Services Department and Building & Safety Department. The source of funding is the Permit Automation Fund.
- 2) Increase the budget appropriation for the City Attorney Department by \$230,000 to pay for the costs of outside counsel handling litigation and administrative proceedings on various lawsuits. The source of funding is the General Fund.
- 3) Increase the budget appropriation for the Recreation Services Division by \$4,500 to pay for purchase of new computers to support the Active Network recreation registration software system. The source of funding is via reduction of a Purchase Order with Active Network for an equivalent amount.
- 4) Increase the budget appropriation for the Planning and Neighborhood services by \$30,000. \$10,000 of the requested amount is for personnel services to administer abandoned vehicles. The source of funding will come from the Abandoned Vehicle Program reimbursement from the County. The remaining \$20,000 is for consultant services to prepare CEQA and other similar environmental review for development projects. The source of funding is private developer fees.

**Fiscal Impact:** The total budget adjustment request is \$279,500, of which \$34,500 will have either revenues or existing purchase order to offset the appropriations. The remaining \$245,000 will be funded by fund balances in the Permit Automation Fund and General Fund.

**Recommendations:** Approve the Fiscal Year 2013-14 mid-year budget appropriations as itemized in the budget change form (included in the City Council agenda packet).

\* **7. Receive City of Milpitas Investment Portfolio Status Report for the Quarter Ended December 31, 2013 (Staff Contact: Emma Karlen, 408-586-3145)**

**Background:** In compliance with the California Government Code and the City's Investment policy, the City of Milpitas Investment Report for the quarter ended December 31, 2013 is submitted for City Council review and acceptance.

The Portfolio Summary Report provides a summary of the City's investments by type. It lists the par value, market value, book value, percentage of portfolio, term, days to maturity and the equivalent yields for each type of investment. The Portfolio Details Report provides the same information for each individual investment in the City's portfolio as of December 31, 2013.

As of December 31, 2013, the principal cost and market value of the City's investment portfolio was \$173,345,984 and \$173,242,696 respectively. When market interest rates increase after an investment is purchased, the market value of that investment decreases. Conversely, when market interest rates decline after an investment is purchased, the market value of that investment increases. If investments are not sold prior to the maturity date, there is no market risk. Therefore, in accordance with the City's investment policy, all investments are held until maturity to ensure the return of all invested principal.

The City's effective rate of return for the period ended December 31, 2013 was 0.66%. The comparative benchmarks for the same period were 0.26% for LAIF (Local Agency Investment Fund) and 0.30% for the 12-month average yield of the 2 year Treasury Note. The weighted average maturity of the portfolio was 516 days.

The investment portfolio is in compliance with the City's investment policy. A combination of securities maturing, new revenues, and tax receipts will adequately cover the anticipated cash flow needs for the next six months. Cash flow requirements are continually monitored and are considered paramount in the selection of maturity dates of securities.

The market values of the securities were provided by BNY Mellon, the safekeeping bank of the City's securities. All the securities owned by the City are held in the trust department of BNY Mellon under the terms of a custody agreement.

Three charts are included with the agenda packet that show investment by maturity levels, comparison of the City's portfolio yields to other benchmark yields as well as a trend of the type of securities in the City's portfolio, weighted average maturity and average yield.

**Fiscal Impact:** None.

**Recommendation:** Receive the investment report for the quarter ended December 31, 2013.

## **XVIII. ORDINANCE**

\* **8. Waive the Second Reading and Adopt Ordinance No. 26.4 Updating City Expenditure Ratification Process Per State Law (Staff Contact: Emma Karlen, 408-586-3145)**

**Background:** On January 7, 2014, the City Council introduced Ordinance No. 26.4 to update the City expenditures ratification process in accordance with State Law. The Ordinance provides

the City Council flexibility in how budgeted warrants and demands can be audited and ratified. Ordinance No. 26.4 is ready for adoption.

**Recommendation:** Waive the second reading and adopt Ordinance No. 26.4, updating the City expenditure ratification process in accordance with state law.

## **XIX. RESOLUTION**

- \* **9. Adopt a Resolution to Approve a Non-Exclusive Collection, Transportation, and Recycling Agreement with Orlando De La Cruz doing business as North Cal Hauling (Staff Contact: Jeff Moneda, 408-586-3345)**

**Background:** In accordance with Title V, Chapter 200 of the Milpitas Municipal Code and the City's solid waste franchise agreement with Republic Services, solid waste collectors may enter into non-exclusive agreements with the City to collect and dispose of certain non-organic solid waste and/or construction and demolition debris from Milpitas businesses that are not covered by the Republic Services' exclusive franchise agreement.

Staff received a request from Orlando De La Cruz, an individual dba North Cal Hauling, for a non-exclusive franchise agreement for the collection, transport, and recycling of debris. North Cal Hauling intends to haul general debris box waste, such as construction and demolition waste within City limits. The proposed agreement requires North Cal Hauling to pay the City twelve percent (12%) of the gross receipts actually received or collected by North Cal Hauling. The City has also entered into nine agreements with other hauling contractors to provide this same service and the proposed agreement contains similar terms and conditions as the other agreements.

The proposed agreement is for a three- year term. Staff requests authority to administratively review collections under the agreement and grant a maximum of two, three-year agreement extensions without further Council action.

**Fiscal Impact:** None.

**Recommendation:** Adopt a resolution to approve a Non-Exclusive Collection, Transportation, and Recycling of Debris Agreement with Orlando De La Cruz doing business as North Cal Hauling for a three year term and authorize the City Manager or designee to extend the agreement a maximum of two, three-year extensions.

## **XX. AGREEMENT**

- \* **10. Approve Amendment No. 4 to Agreement with Jarvis, Fay, Doporto & Gibson for Attorney Services Relative to Newby Island Landfill Litigation (Staff Contact: Michael Ogaz, 408-586-3040)**

**Background:** The law firm of Jarvis, Fay, Doporto & Gibson has been representing the City in litigation against the City of San Jose related to certain Zoning Code amendments and other land use approvals, including certification of an Environmental Impact Report (EIR), which would allow the Newby Island landfill operators to increase the height of the landfill and authorize other activities at the landfill. Staff has questioned the EIR analysis, especially regarding treatment of odor issues and pointed out shortcomings in the approval process. The City of Milpitas ultimately filed suit after repeated attempts to settle the dispute failed. The Superior Court ruled the San Jose EIR was adequate, but the City of Milpitas contends the Court was in error and may wish to appeal to the higher Appellate Court. The continuing litigation will require further funding through the appeal process.

**Fiscal Impact:** None.

**Recommendation:** Approve Amendment No. 4 to the agreement with Jarvis, Fay, Doportto & Gibson contract for attorney services, increasing the agreement by \$80,000.

**XXI. ADJOURNMENT**

**NEXT REGULARLY SCHEDULE COUNCIL MEETING  
TUESDAY, FEBRUARY 18, 2014 AT 7:00 P.M.**