



**MILPITAS CITY COUNCIL MEETING AGENDA
DECEMBER 11, 2007**

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

SUMMARY OF CONTENTS

- I. CALL TO ORDER/ROLL CALL (6:30 p.m.)**
- II. ADJOURN TO CLOSED SESSION**

CONFERENCE WITH LABOR NEGOTIATOR - COLLECTIVE BARGAINING
(Pursuant to CA Government Code §54957.6) City Negotiator: Carmen Valdez
Employee Group: Milpitas Police Officers Association (MPOA)
Under Negotiation: Wages, Hours, Benefits, and Working Conditions

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
(Pursuant to CA Government Code §54956.9)
Wells vs. City of Milpitas, WCAB #SJO 0265892 and SJO 0265893
- III. CLOSED SESSION ANNOUNCEMENTS:** Report on actions taken in Closed Session, if required, pursuant to Government Code §54957.1, including the vote on abstention of each member present
- IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)**
- V. INVOCATION** (Councilmember Giordano)
- VI. APPROVAL OF COUNCIL MEETING MINUTES** - November 27, 2007
- VII. SCHEDULE OF MEETINGS** (Council Calendar for December 2007)
- VIII. PRESENTATION**

Commendation:
M.A.T. Caparas, Past President of Rotary International
- 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**
- XII. APPROVAL OF AGENDA**
- XIII. CONSENT CALENDAR** (Items with Asterisks*)

XIV. PUBLIC HEARINGS

- 1. Adopt Resolution for Fire Department Fee Adjustments (Staff Contact: Patricia Joki, 586-3370)**
- 2. Authorize 2008 Citizen Options for Public Safety (COPS) Grant (Staff Contact: Charlotte Pang, 586-2432)**
- 3. Introduce Uncodified Ordinance No. 276 Approving 2008 and 2009 Annual Rate Adjustments for Recycling and Solid Waste Services and Amending Collection Agreement with Allied Waste Services of North America LLC to Reflect These Changes (Staff Contact: Kathleen Phalen, 586-3345)**

XV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

- RA1. Call to Order by the Mayor/Chair**
- RA2. Roll Call**
- RA3. Approval of Minutes (November 27, 2007)**
- RA4. Approval of Agenda and Consent Calendar (Items with Asterisks*)**
- RA5. Receive Progress Reports on Library, East Parking Garage, and North Main Streetscape Projects No. 8161, No. 8162, and No. 8165 (Staff Contact: Steve Erickson 586-3414)**
- RA6. Acceptance of the City's Comprehensive Annual Financial Report, Component Unit Financial Statements, and Other Related Annual Audited Reports for the Fiscal Year Ended June 30, 2007 (Staff Contact: Emma Karlen, 586-3145)**
- RA7. Receive Financial Status Report for the Three Months Ended September 30, 2007 (Staff Contact: Emma Karlen, 586-3145)**
- RA8. Approval of the Brand Implementation Program and Contract with Susan Lewis (Staff Contact: Diana Whitecar, 586-3059)**
- RA9. Update on Exclusive Negotiating Rights Agreement with Nueterra Real Estate (Staff Contact: Diana Whitecar, 586-3059)**
- RA10. Approval of Artists for the New Library Plaza and South Tower (Staff Contact: Diana Whitecar, 586-3059)**
- *RA11. Authorize Participation in the Climate Control Project through Joint Venture Silicon Valley Network (Staff Contact: Diana Whitecar, 586-3059)**
- *RA12. Acceptance of the Milpitas Redevelopment Agency Fiscal Year 2006-2007 Annual Report (Staff Contact: Emma Karlen, 586-3145)**
- *RA13. Approve Certificates of Completion for Certain Residential Units within Tract No. 9697 and Tract 9698 for KB Home, Project No. 3160 (Staff Contact: Robert Wang, 586-3327)**
- *RA14. Authorize the City Manager/Agency Director to Execute Amendment No. 3 to the Agreement with Stantec Consulting Inc., for the Midtown East Parking Garage, Project No. 8161 (Staff Contact: Steve Erickson, 586-3414)**
- RA15. Agency Adjournment**

XVI. REPORTS OF OFFICERS, COMMISSIONS, AND COMMITTEES

City Council

- * 4. Consider Mayor's Recommendations for Appointments/Re-Appointments to the Community Advisory Commission (Contact: Mayor Esteves, 586-3029)
- * 5. Consider Mayor's Recommendation for Re-Appointment to Planning Commission (Contact: Mayor Esteves, 586-3029)

Public Art Committee

- * 6. Recommendation of Amy Trachtenberg as the Milpitas BART Station Platform Artist (Staff Contact: Diana Whitecar, 586-3059)

Telecommunications Commission

- 7. Adopt 2007 Telecommunications Master Plan (Staff Contact: Bill Marion, 586-2701)

XVII. NEW BUSINESS

- * 8. Approve Special Events Calendar for 2008-2009 (Staff Contacts: Bonnie Greiner, 586-3227 and Dale Flunoy, 586-3228)

XVIII. ORDINANCES

- 9. Waive the First Reading Beyond Title and Introduce Traffic Ordinance No. 43.209 Amending Chapter 100, V (Traffic) of the Milpitas Municipal Code (Staff Contact: Jaime Rodriguez, 586-3335)
- * 10. Waive the Second Reading and Adopt Ordinance No. 65.136 Amending Building Code Administration, Adopt and Amend by Reference the 2007 Editions of the California Building Code, California Mechanical Code, California Electrical Code, California Plumbing Code, California Historical Building Code and California Existing Building Code; Adopt by Reference the 2006 Edition of the International Existing Building Code Appendix Chapter A2, A3, A4 and A5 (Staff Contact: Keyvan Irannejad, 586-3244)

XIX. RESOLUTIONS

- * 11. Adopt Resolution Declaring Weeds on Certain Properties to be a Public Nuisance and Setting a Public Hearing for January 15, 2008 to Hear Objections (Staff Contact: Patricia Joki, 586-3370)
- 12. Adopt Resolution Approving Extension of the Memorandum of Understanding with Milpitas Police Officers Association (MPOA) (Staff Contact: Carmen Valdez, 586-3086)
- * 13. Adopt Resolution Amending City of Milpitas Classification Plans for City Attorney's Office (Staff Contact: Mike Ogaz, 586-3040)
- * 14. Adopt Resolution for the Approval of a New Hillside Home Located at 826 Calaveras Ridge Drive "S" Zone No. (SZ2007-3) (Staff Contact: Judie Gilli, 586-3280)
- * 15. Adopt Resolution Making Findings for Unexpended Development Fees and Receive the Status Report on the Development Fee Accounts (Staff Contact: Emma Karlen, 586-3145)
- * 16. Approve Agreement with Municipal Revenue Advisors for Sales Tax and Use Tax Consulting Services and Adopt Resolution Designating Municipal Revenue Advisors as an

Authorized Representative to Examine Sales and Use Tax Records (Staff Contact: Emma Karlen, 586-3145)

XX. BIDS AND CONTRACTS

- * 17. Approve Amendment No. 2 to the Agreement for Consulting Services with Dyett & Bhatia Urban and Regional Planners (Staff Contact: James Lindsay, 586-3273)
- * 18. Authorize the City Manager to Execute Contract with Cannon Design Group to Provide As Needed Design Review Services (Staff Contact: James Lindsay, 586-3273)
- * 19. Authorize the City Engineer to Execute Contract Change Order No. 3 to the Contract with Anderson Pacific Engineering Construction for the Main Sewage Pump Station, Project No. 6103 (Staff Contact: Greg Armendariz, 586-3317)
- * 20. Approve Consultant Agreement with LFR Inc. for Design of the Singley Area Street Rehabilitation and Whittier Street Improvements Street Resurfacing Project 2008, Project No. 4242 (Staff Contact: Andrew Brozyna, 586-3315)

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, JANUARY 15, 2008 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, 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 OPEN GOVERNMENT SUBCOMMITTEE

at the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035

E-mail: mogaz@ci.milpitas.ca.gov / Fax: 408-586-3030 / Phone: 408-586-3040

A free copy of the Open Government Ordinance is available from the City Clerk's Office or by visiting the City's website www.ci.milpitas.ca.gov, select Open Government Ordinance under News Features.

BECOME A CITY COMMISSIONER!

Currently, there are openings for the:

Arts Commission

Economic Development Commission (Hotel Rep)

Mobile Home Park Rental Review Board

Planning Commission

Parks, Recreation and Cultural Resources Commission

Recycling and Source Reduction 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.

AGENDA REPORTS

XIV. PUBLIC HEARINGS

1. Adopt Resolution for Fire Department Fee Adjustments (Staff Contact: Patricia Joki, 586-3370)

Background: Fees for service are periodically adjusted to stay current with costs for service. Most fire agencies adjust fees on a cyclic basis. The City's most recent adjustment occurred in 2003. In June 2007, the Council's Finance Subcommittee directed staff to determine a rate that would be 100% cost recovery. Fire staff used this rate in calculating the proposed fees.

Fiscal Impact: With the adoption of a revised fee schedule, there will be an increase in revenue proportionate to cost recovery for the service provided.

Included in the agenda packet is a draft resolution with proposed new fees. Also included is a memo to the City Council from Fire Chief Clare Frank dated 11/28/07 with attachments to explain the calculation of fees.

Recommendations:

1. Re-open the public hearing for comments, and move to close the public hearing.
2. Adopt a resolution amending Resolution No. 7352, the Fire Department fee schedule adjusting Fire Department fees.

2. Authorize 2008 Citizen Options for Public Safety (COPS) Grant (Staff Contact: Charlotte Pang, 586-2432)

Background: The California State Legislature awarded \$128,004 to the City of Milpitas through the Citizen Options for Public Safety (COPS) Grant. No city matching funds are required.

CA Government Code sections 30061-30065 specify that these funds must be used for front line law enforcement services and must supplement and not supplant existing funding for front line law enforcement services. These funds shall be appropriated pursuant to a written request from the Chief of Police of the law enforcement agency that provides police services for that city. The request shall indicate the front line law enforcement needs of the requesting entity including the personnel and equipment that are necessary to meet those needs.

The police staff is requesting that the designated monies be used to fund: Alert Line Enhancement to Computer-Aided-Dispatch (CAD) system; Automated License Plate Reader; Chemical Agents, Child ID System for Fingerprinting; CrashZone Accident Diagramming Training; Digital Evidence Photo Software; Field Evidence Supplies; Rifle Magazines and Tasers with cameras.

Recommendations:

1. Open the public hearing, and after hearing public comment, move to close the public hearing.
2. Approve appropriation in the amount of \$128,004 into the Police Department operating budget.

3. Introduce Uncodified Ordinance No. 276 Approving 2008 and 2009 Annual Rate Adjustments for Recycling and Solid Waste Services and Amending Collection Agreements with Allied Waste Services of North America LLC to Reflect These Changes (Staff Contact: Kathleen Phalen, 586-3345)

Background: The City provides residential and commercial solid waste services, including garbage collection and disposal, recycling and yard trims programs, and street sweeping, through long-term franchise agreements with Allied Waste Services of North America (Allied). The City

entered into the garbage and recycling agreement with Allied in 1986 and the yard trims agreement in 1996. Both agreements expire on September 5, 2017. The agreements require that Allied be compensated for its services through customer rates that are adjusted every two years. The agreements do not give the City or Allied the ability to select the magnitude of rate adjustment since this is dictated by a formula in the agreements. The adjustment formula incorporates changes in the Consumer Price Index and allows for selected extraordinary costs due to changes in law or other circumstances beyond Allied's control. This current adjustment also includes the cost (as determined by contract formula) for street sweeping. In the previous adjustment period, Allied provided street sweeping at no cost to rate payers in exchange for a ten-year contract extension.

By agreement, the next rate adjustment is effective January 1, 2008. Although the agreements call for biennial adjustments, staff recommends that the City implement the increase in two annual steps to moderate the impact to customers. For the single-family residential customer, this results in annual increases of 7.7% on January 1, 2008 and again on January 1, 2009 (increasing the current monthly charge from \$25.97 to \$27.96 on 1/1/08 and \$30.11 on 1/1/09). Alternately, the City may implement a single biennial increase that would result in an 11.8% increase (monthly charge of \$29.04) for single-family residential customers on January 1, 2008. The second option results in the equivalent total cost to customers over two years. Proposed Ordinance No. 276 containing the complete 2008 and 2009 annual rate schedules is included in the Council's agenda packet.

The City does review Allied's rate application to ensure that the adjustment formula is correctly applied. In September, Allied submitted its application with documentation for a rate adjustment effective January 1, 2008 as required by the agreement. The City retained HF&H Consultants to review the documentation for accuracy and compliance with the agreement terms. Staff and HF&H met with Allied weekly throughout the fall to reach the final version of the application used as the basis for the 2008 and 2009 rate schedules. The HF&H report of this review process is included in the Council packet. The municipal code requires that the City conduct a public hearing when setting garbage rates. Since the magnitude of this rate increase is dictated by a contract formula, Council should consider public comment on the process of applying and reviewing the adjustment formula to determine 2008 and 2009 rates.

In October 2007, HF&H completed a survey of Bay Area solid waste rates showing that Milpitas rates remain comparatively low, even after a 7.7% increase. The average monthly rate of 68 Bay Area cities is \$21.67 for 32-gallon weekly residential curbside service, \$41.52 for 64-gallon service, and \$60.81 for 96-gallon service. On January 1, Milpitas single-family curbside customers will continue to receive unlimited volume weekly service at a monthly rate of \$27.96, ranking Milpitas 14th lowest out of 68 cities when compared to 64-gallon service subscriptions and third lowest out of 68 when compared to 96-gallon service subscriptions.

Fiscal Impact: There is no fiscal impact from the recommended action. It is cost neutral because increased service costs are balanced by the rates.

Recommendations:

1. Waive the first reading beyond the title of Ordinance No. 276.
2. Introduce uncodified Ordinance No. 276 approving the 2008 and 2009 annual rate adjustments for recycling and solid waste services and amending collection agreements with Allied Waste Services to reflect these changes.

XV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Call to Order by the Mayor/Chair

RA2. Roll Call

RA3. Approval of Minutes (November 27, 2007)

RA4. Approval of Agenda and Consent Calendar (Items with Asterisks*)

RA5. Receive Progress Reports on Library, East Parking Garage, and North Main Streetscape Projects No. 8161, No. 8162, and No. 8165 (Staff Contact: Steve Erickson 586-3414)

Background: The Library Subcommittee met on November 27 and heard a progress report on the Library, East Parking Garage, and N. Main Streetscape redevelopment agency projects. Construction continues on the Library and Streetscape, and signage and graphic design are underway for the garage. Staff will provide a brief presentation on their progress.

Library

S. J. Amoroso continues with construction of the library. Installation of EFIS exterior wallboard and metal stud framing for the garage/library fire separation walls continues. Installation of interior framing, mechanical, electrical, and plumbing fixtures also continues.

East Parking Garage

Construction of the garage is complete, the project was initially accepted on October 2, 2007, and the structure is within the one-year warranty period. Architect Chong Partners continues with design of signage and graphical display packages that will be bid early 2008 and installed next summer.

North Main Streetscape

JJR Construction continues work on the first phase of the N. Main Streetscape from Weller Lane to the 237-off ramp. Work continues along the western half of the roadway with installation of storm drainage, curb, and sidewalk installation. Construction is being staged to maintain traffic and access.

Fiscal Impact: None

Recommendation: Receive progress reports from staff on Library, East Parking Garage, and North Main Streetscape Projects No. 8161, No. 8162 and No. 8165.

RA6. Acceptance of the City's Comprehensive Annual Financial Report, Component Unit Financial Statements, and Other Related Annual Audited Reports for the Fiscal Year Ended June 30, 2007 (Staff Contact: Emma Karlen, 586-3145)

Background: Transmitted are the Comprehensive Annual Financial Report (CAFR) of the City of Milpitas, Milpitas Redevelopment Agency Component Unit Financial Statements, Single Audit Report, Bicycle/Pedestrian Projects Financial Statements, Agreed Upon Procedures Report on Compliance with the Appropriations Limit Increment and the Memorandum on Internal Control Structure for the fiscal year ended June 30, 2007.

Comprehensive Annual Financial Report (CAFR) of the City of Milpitas

The CAFR presents the operations and financial activity of all the City's various funds, including the General Fund. It includes an unqualified audit opinion from Maze & Associates, the City's external auditors, that the financial statements present fairly the results of operations for the year ended June 30, 2007, in conformance with Generally Accepted Accounting Principles (GAAP).

Milpitas Redevelopment Agency Component Unit Financial Statements

The Milpitas Redevelopment Agency is a component unit of the City of Milpitas. The accompanying component unit financial statements present the operations and financial activity of the Milpitas Redevelopment Agency including the Agency's redevelopment project fund and housing reserve fund. The Agency's Component Unit Financial Statements include an unqualified audit opinion from Maze & Associates, the Agency's external auditors, that the financial statements present fairly the results of operations for the year ended June 30, 2007, in conformance with GAAP. The report from Maze & Associates also includes a Compliance

Report indicating that the Agency complied, in all material respects, with provisions of laws and regulations contained in the Guidelines for Compliance Audits of California Redevelopment Agencies issued by the State Controller's Office.

Single Audit Report

The Single Audit Report for the fiscal year ended June 30, 2007. The Single Audit is required by the Office of Management and Budget Circular A-133 for state and local governments and non-profit organizations that receive Federal Awards. The Single Audit report did not disclose any reportable conditions, significant deficiencies or material weaknesses for both financial reporting and compliance.

Bicycle/Pedestrian Projects Financial Statements

The Bicycle/Pedestrian Projects Financial Statements includes Bicycle/Pedestrian Projects that were developed using Transportation Development Act (TDA) grants. The auditor issued an unqualified opinion on these statements.

Agreed Upon Procedures Report on Compliance with the Appropriations Limit Increment

This report shows the auditor applied specific procedures to validate the City's Appropriations Limit calculations.

Memorandum on Internal Control Structure

Under generally accepted auditing standards, our auditors are encouraged to report certain matters regarding the City's internal control structure. The City's auditors have provided such a report in their Memorandum on Internal Control Structure ("Management Letter") for the Year Ended June 30, 2007. This report includes management response to the auditor's letter. It should be noted that the auditors do not view any of their comments as material weaknesses or significant deficiencies. Rather, they represent noteworthy items from an objective and independent perspective. In their report, the auditor pointed out that the Purchase and Sale Agreement between the Redevelopment Agency and the City for the purchase of eight parcels of land did not have a defined payment term and penalized the Agency for payments that were budgeted but remained unpaid because the City did not demand those payments. Furthermore, the sales price for four parcels of land did not reflect the financial assistance received from the Agency at acquisition. The City addressed all these concerns by revising the Purchase and Sale Agreement to reflect the Agency's financial assistance, to define the payment terms and to provide for simple interest calculation. The amended Purchase and Sale Agreement was approved by the City Council and Agency Board in August 2007.

Fiscal Impact: There is no fiscal impact for the recommended action.

Recommendation: Move to accept the City's Comprehensive Annual Financial Report, the Redevelopment Agency Component Unit Financial Statements, and other related Annual Audited Reports for the fiscal year ended June 30, 2007.

RA7. Receive Financial Status Report for the Three Months Ended September 30, 2007 (Staff Contact: Emma Karlen, 586-3145)

Background: As of September 30, 2007, the General Fund received approximately \$6.9 million in revenues, which is slightly higher (6.5%) than the revenues received for the same period in FY 06-07. However, in comparison, General Fund expenditures also went up 6.2%. Although the overall General Fund revenues in the first three months appear to be on track with budget, sales tax revenue was down about 4.4% compared to last September. The FY07-08 budget projected sales tax revenue increase of 7.7%. However, based on the latest sales tax report received from our consultant, sales tax revenue is now revised to be 0% increase. Recent housing market decline coupled with the problem of sub-prime mortgages had a negative impact on consumer spending.

There is other General Fund revenue that show some increases. Business license revenues show an increase of \$100,000 primarily due to implementation of a business license-processing fee that was approved by the Council. Transient occupancy tax remains strong, reflecting a continuing trend since last year. Charges for current services reflect some fee increases that were approved in Recreation Services but also increase in development applications processed by the Planning and Engineering divisions.

City departments' expenditures are on track with their budget. It should be noted there are several departments that exceeded 25% spending for the first three months. However, these spending patterns are typical due to various expenditures that need to be paid at the beginning of the fiscal year rather than being spread out throughout the year. Examples of such expenditures include worker comp insurance premium which was paid from the Human Resources budget, software license maintenance fees which were paid from the Information Services Department budget and contribution to the Chamber of Commerce which was paid from the City Council budget. Parks and Recreation Department also exceeded 25% primarily due to seasonal hires in the summer months.

Recommendation: Receive the financial status report for the three months ended September 30, 2007.

RA8. Approval of the Brand Implementation Program and Contract with Susan Lewis (Staff Contact: Diana Whitecar, 586-3059)

Background: On September 18, City Council approved the new city brand, or logo, "Milpitas, Silicon Valley...life@ your pace." Staff indicated that it would return by the end of the year to present an implementation package for launching the brand. The memo included in the agenda packet outlines the specific activities and associated costs of the implementation program, summarized below.

The focus for implementation is two-fold: locally to residents and businesses, and to the larger business audience. Included in the implementation is the preparation of information that can be used in business attraction and retention and that can be used by local businesses, hotels and retailers to promote the City.

Implementation is phased over the next calendar year and divided into quarterly projects and activities. The first phase is "Community Engagement" to explain why the new brand is important, build awareness, recognition and build support and will include the use of utility inserts for disseminating brand information. The second phase is "Local Business Engagement" to explain why the new brand is important, build support and extend business relationships for partnering. During this phase staff will build stronger relationships with local and regional press and target businesses within these clusters: Medical Services, Computer and Communications Hardware and Innovation Services such as nanotechnology and Research & Development.

The first two phases will be during the last half of the current fiscal year and the total costs will not exceed \$30,000.

The third phase will focus on businesses with sales greater than \$2.5 million sales and existing residents. It is estimated that Milpitas has approximately 300 businesses in this sales range. One of the messages will be that the City of Milpitas has the resources, infrastructure and attitude for 'business @ your pace' and 'family life @ your pace' as well.

The fourth phase will focus on regional awareness to build awareness of Milpitas' assets, image and activities. This will involve advertisement in the Silicon Valley Business Journal and in the development of an electronic newsletter for business.

Total cost of the last two phases is estimated at \$60,000 and will be included in the proposed FY 2007-08 Economic Development operating budget.

Marketing Consultant: Staff recommends that Susan Lewis be retained to implement the branding program. Ms. Lewis developed the program with the Community Stakeholder Committee and the Economic Development Commission. She has established ties with local business media and is best suited to continue this project through completion. The estimated cost for the contract with Ms. Lewis to implement the first two phases is \$24,000.

Fiscal Impact: Estimated costs for the implementation of Phase I and II and the contract with Susan Lewis are \$54,000. These funds are available in the Economic Development operating budget.

Recommendations:

1. Receive staff report on brand implementation.
2. Approve a contract with Susan Lewis, On-Target Marketing for an amount not to exceed \$24,000, and approve the Brand Implementation Program.

RA9. Update on Exclusive Negotiating Rights Agreement with Nueterra/Silicon Valley Real Estate I Real Estate (Staff Contact: Diana Whitecar, 586-3059)

Background: On August 21, 2007, the Redevelopment Agency approved an Exclusive Negotiating Rights Agreement (ENRA) with Silicon Valley Real Estate I/Nueterra for the development of a hotel and hospital on the Agency-owned property at Tasman and I-880. The Redevelopment Agency acquired this 3.34 acre site in 2000 for the purpose of a Class A hotel development.

Nueterra, working with a group of 80 local physicians created a new development group, Silicon Valley Real Estate I, LLC, to pursue negotiations. As required by the ENRA, Nueterra deposited \$50,000 for costs associated with the negotiations.

Terms of the ENRA were for the developer to design and construct a multi-story hotel, hospital and medical offices to create a landmark structure in Redevelopment Project Area No. 1. The term was for 120 days with an option for a 60 day extension. The developer was to prepare submittals for design and permit review in accordance with schedule agreed upon with City and Developer. In addition, the Agency agreed to facilitate meetings with Valley Transportation Authority (VTA) regarding use of VTA owned property adjacent to the Agency owned property.

In October, the developer and physicians group informed staff that they were not able to come to agreement on the hospital development costs, as the physicians group felt that Nueterra's costs were higher than required to build a hospital. Staff completed preliminary research on hospital construction costs and believe that Nueterra's estimate was realistic, but the physician's group decided to dissolve their partnership with Nueterra and to pursue a hospital independent of Nueterra.

Both parties have expressed interest in project development on the Agency-owned site. Nueterra indicated a willingness to develop a hotel with meeting space on the site and the physicians expressed an interest in constructing a hospital on the site. Since that time, the physicians have found another Milpitas site that they are pursuing for the hospital.

Staff requests direction from the Redevelopment Agency at this point. If the Agency so chooses, staff will continue to work with Nueterra over the next 60 days to develop the basis for a Disposition and Development Agreement for the construction of a hotel with meeting space on the Agency owned property. Another option for the Agency is to sever the ENRA and direct staff to solicit new development proposals for the Agency-owned property.

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

Recommendation: Provide direction to staff on the Exclusive Negotiating Rights Agreement.

RA10. Approval of Artists for the New Library Plaza and South Tower (Staff Contact: Diana Whitecar, 586-3059)

Background: On August 7, 2007, the City Council approved the hiring of an Art Advisor for the Library Public Art selection process and directed the Public Art Committee (PAC) and staff to initiate the selection process for the Library public art.

Selection Process: Art advisor Lynne Baer recruited artists during August for PAC consideration in September. Ms. Baer presented 14 artist qualifications to the PAC that narrowed the list to six artists – three for the plaza and three for the tower. The artists submitted presentation boards and models describing their proposals and these were used to begin a public comment period at the public reception in City Hall on October 16. The six artists made individual presentations to the PAC and the Library Advisory Commission on October 22. During the remainder of October and early November, PAC members presented the art project proposals to nearly all the City Commissions, to the General Public at the Library on the weekend of November 5 and 6, to the Milpitas Rotary Club and to the Milpitas Unified School District Board of Trustees. As a result, nearly 300 written public comments were received on the art proposals.

The PAC met again in special session on November 15 to select the artists for the plaza and tower. The Committee reached consensus on the artists as described below. PAC members will be at the City Council meeting on December 11 to make the recommendations to the City Council and the artists will be present to describe their individual artworks.

Library Plaza: The PAC recommends that the City Council approve Brian Goggin for the Library Plaza placement of his artwork proposal, “Terrapedia.” “Terrapedia” is a colossal book rising out of the concrete plaza with the edges of the pages carved from variegated layers of white limestone, resembling the torn pages from old books. At chosen times, water will trickle from the underside of the binding down the layers of the page edges. The triangular shaped structure is approximately five feet high by 18 feet long and 11 feet deep.

Library South Tower: The PAC recommends that the City Council approve Rebeca Bollinger for the Library South Tower for placement of her artwork proposal, “Slowly Moving Micro-Macro Milpitas Mashup.” Ms. Bollinger’s art celebrates the rich diversity and history of the City of Milpitas. The artwork is an aggregate of translucent objects and shapes suspended from the library’s ceiling that includes a combination of items made from clear and colored glass, plexiglas, dichroic glass and semi-translucent mirrored plexiglas. The whole mobile will slowly rotate 360 degrees creating constantly changing images and shadows. The artwork will be illuminated at night.

Total costs associated with the fabrication and installation include the following: \$100,000 for a contract with Brian Goggin to produce and install the proposed Plaza Art “Terrapedia;” \$20,000 foundation and engineering costs associated with the installation; \$200,000 for a contract with Rebeca Bollinger to produce and install the proposed Library South Tower art “Slowly Moving Milpitas Mash-up” and \$20,000 for engineering costs associated with the installation. The last cost will be provided for the Library Project Architect, Group4, who will need to coordinate with the project design and construction teams and artists for the installation. It is estimated that this cost will not exceed \$20,000.

If the PAC recommendations are approved by the Council, then contracts with the artists will be executed and coordination efforts between the artists’ and their teams and the Library Construction team will commence. Minor costs associated with the construction team’s coordination efforts are anticipated and these costs will be charged to the engineering and foundation costs estimated for each artwork. Library construction team members will coordinate any proposed changes with the contractor and keep the Council informed through their monthly updates to the Library Subcommittee and City Council.

Fiscal Impact: There are sufficient funds for the proposed Library Art projects in the Public Art Fund. Appropriation of the funds for the art fabrication, structural engineering and installation of the two pieces is estimated at a total of \$360,000.

Recommendation: Authorize the Agency Executive Director to execute contracts with Brian Goggin and with Rebeca Bollinger for the two Library public art pieces, and appropriate \$360,000 from the Public Art Fund for the contracted services to fabricate and install the art.

***RA11. Authorize Participation in the Climate Control Project through Joint Venture Silicon Valley Network (Staff Contact: Diana Whitecar, 586-3059)**

Background: With the passage of Assembly Bill 32, the California Global Warming Solutions Act of 2006, it is very likely that cities will soon be required to monitor and reduce greenhouse emissions, similar to the state mandated requirement for cities to reduce garbage and landfill disposal. Joint Venture Silicon Valley Network has created a consortium, the Joint Venture Climate Protection Task Force, for cities to participate in that will begin to address greenhouse emissions. The program charter is to develop effective, collaborative, solutions for the reduction of greenhouse gas emissions from public agency operations by providing a neutral forum for city and county government agencies and special districts to learn from each other and from others about climate protection programs.

The Task Force will work with the International Council for Local Environmental Initiatives (ICLEI) that will establish a baseline for future monitoring and reduction requirements. The collaboration allows cities to work with ICLEI at a reduced rate savings of up to 30%.

The proposed goals are:

1. Accelerate the reduction of greenhouse gas emissions by public agencies.
2. Use demand aggregation to conserve scarce public resources.
3. Encourage and support the growth of the clean technology industry.
4. Provide leadership for the community and the world.

One of the most important outcomes will be the consolidation of existing City of Milpitas guidelines for environmental protection, an area that staff believes will show that the City has many existing policies, that taken together will illustrate the City's commitment to the environment.

Fiscal Impact: Total cost of participating in the Task Force is \$15,000. Funds for the participation are available in the City's Economic Development Operating Budget.

Recommendation: Authorize participation in the Joint Venture Silicon Valley Network Climate Protection Task Force and authorization of \$15,000 for the participation.

***RA12. Acceptance of the Milpitas Redevelopment Agency Fiscal Year 2006-2007 Annual Report (Staff Contact: Emma Karlen, 586-3145)**

Background: Pursuant to the reporting requirements of the Community Redevelopment Law and the Agency's bylaws, the Agency must prepare a report annually to its legislative body within six months of its fiscal year end. Staff has prepared the Fiscal Year 2006-2007 Annual Report to provide the board members of the Agency with an overview of the redevelopment activities and accomplishments for the two project areas. An independent financial audit report will be presented for the Agency Board's acceptance in a separate agenda report to Council this date.

Fiscal Impact: There is no fiscal impact for the recommended action.

Recommendation: Move to accept the Milpitas Redevelopment Agency Fiscal Year 2006-2007 Annual Report.

***RA13. Approve Certificates of Completion for Certain Residential Units within Tract No. 9697 and Tract 9698 for KB Home, Project No. 3160 (Staff Contact: Robert Wang, 586-3327)**

Background: On January 18, 2005, the City of Milpitas Redevelopment Agency and KB Home South Bay, Inc., entered into a Disposition and Development Agreement (DDA) concerning the residential development, Terra Serena, north and east of South Abel Street. The recorded grant deed, which conveyed the subject real property from the Agency to KB Home, requires that the Redevelopment Agency issue a Certificate of Completion upon the completion of the infrastructure improvements in accordance with the DDA. Certain improvements have been satisfactorily completed to serve certain residential units as shown on the Certificates of Completion, and therefore a certificate of completion may be granted to only those housing units.

Fiscal Impact: None.

Recommendation: Authorize the Agency Executive Director to execute the Certificates of Completion, pertaining to certain residential units (described on the Certificates of Completion documents), for KB Home Terra Serena Project No. 3160, subject to the approval of the Agency Counsel as to form.

***RA14. Authorize the City Manager/Agency Director to Execute Amendment No. 3 to the Agreement with Stantec Consulting Inc., for the Midtown East Parking Garage, Project No. 8161 (Staff Contact: Steve Erickson, 586-3414)**

Background: This project is included in the current five-year Capital Improvement Program (CIP), and provides for the design and construction of the new Midtown east parking garage located on the east side of Main Street next to the in-progress new library.

The City Council approved an agreement with Chong Partners Architecture on April 5, 2005 to provide the design and architectural services for the garage. The project has been successfully completed, was initially accepted on October 2, 2007, and is within the one-year warranty period.

Chong Partners Architecture has been acquired by Stantec Consulting Inc. Under the acquisition, Stantec Consulting assumes all obligations, duties, and liabilities of Chong Partners Architecture with respect to the design of the east parking garage.

During construction of the parking garage, staff asked the architect to provide additional design services to address security issues with the stair screens and exterior gates, to omit painting of ceilings, and to provide designs for the garage pylon signs and historical branded board displays. Staff recommends that an agreement amendment with Stantec Consulting Inc. be executed for these design service changes. Staff has negotiated with a fee for these services not to exceed \$25,350.00.

Fiscal Impact: None. The current project budget has sufficient funds to cover this amendment.

Recommendation: Authorize the City Manager/Agency Director to execute amendment No. 3 to the agreement with Chong Partners/Stantec Consulting Inc. for an amount not to exceed \$25,350.00 for additional design services for the Midtown East Parking Garage, Project No. 8161.

RA15. Agency Adjournment

XVI. REPORTS OF OFFICERS, COMMISSIONS, AND COMMITTEES

City Council

* 4. **Consider Mayor's Recommendations for Appointments/Re-Appointments to the Community Advisory Commission (Contact: Mayor Esteves, 586-3029)**

Background: Mayor Esteves recommends the following Milpitas residents be re-appointed:

Community Advisory Commission:

- 1) Re-appoint Jenifer Lind to a term that expires in January 2012.
- 2) Appoint Chinedu Nwobi (current Alternate No. 1) as a regular member to a term that will start in February 2008 and will expire in January 2012.
- 3) Appoint Viramrinder Meharu (current Alternate No. 3) as Alternate No. 1 to a term that expires in January 2009.
- 4) Appoint Rajeev Madnawat (current Alternate No. 4) as Alternate No. 3 to a term that expires in January 2010.

Recommendation: Consider Mayor's recommendations for the Community Advisory Commission appointments/re-appointments and vote on appointments.

* 5. **Consider Mayor's Recommendation for Re-Appointment to Planning Commission (Contact: Mayor Esteves, 586-3029)**

Background: Mayor Esteves recommends current Commissioner Sudhir Mandal be re-appointed to the Planning Commission to a term that expires in December 2010.

Recommendation: Consider Mayor's recommendation for the Planning Commission re-appointment and vote on re-appointing Sudhir Mandal to a new term on the Commission.

Public Art Committee

* 6. **Recommendation of Amy Trachtenberg as the Milpitas BART Station Platform Artist (Staff Contact: Diana Whitecar, 586-3059)**

Background: The Public Art Committee appointed a subcommittee of three members to work with Santa Clara Valley Transportation Authority (VTA) staff to select artists for two areas in the proposed Milpitas BART Station: the main platform and the glass in the south wall of the main entry. Selection of the artists in the design phase will allow the art to be incorporated as part of a future construction project, facilitating implementation without impacting the construction schedule.

The Subcommittee recommended that Amy Trachtenberg be selected as the platform artist. Ms. Trachtenberg is a visual artist who has exhibited in museums and galleries nationally and has designed sets for opera, dance, and plays as well as created site-specific works in Oakland and San Jose. One of her most recent works is in the Oakland Children's Hospital.

The Public Art Committee voted at its November 26 meeting to recommend to the City Council approval of Amy Trachtenberg for the BART Platform Art.

A recommendation will be made to the City Council in February 2008 on the proposed artist for the BART station glass wall.

Fiscal Impact: There is no fiscal impact associated with this action. Costs for the BART Art will be included in the future BART Construction project.

Recommendation: Consider recommendation of Public Art Committee and authorize approval of Amy Trachtenberg as the platform artist for the future Milpitas BART Station.

Telecommunications Commission

7. **Adopt 2007 Telecommunications Master Plan (Staff Contact: Bill Marion, 586-2701)**

Background: In 1995, the City developed and adopted the Telecommunications Master Plan. This plan was designed to act as a blueprint for the implementation of technology in the City over the next five years. In 2002, the Telecommunications Commission directed a review of the plan and an update that was to serve as the Master Plan through 2007. In 2005, the Commission reviewed the status of the 2002 Master Plan and recommended that a new plan be developed in 2007 for the period 2008-2013. This would continue the cycle of a five year plan with a mid-period review. After reviewing the overall progress of technology efforts in the City during several work sessions, the Telecommunications Commission has completed the 2007 Telecommunications Master Plan for presentation to City Council. The Commission will briefly review accomplishments since 1995 and present the 2007 plan for Council consideration at the December 11 meeting.

Recommendation: Receive the Telecommunication Commission report and adopt the 2007 Telecommunications Master Plan.

XVII. NEW BUSINESS

- * 8. **Approve Special Events Calendar for 2008-2009 (Staff Contacts: Bonnie Greiner, 586-3227 and Dale Flunoy, 586-3228)**

Background: Historically, the City Council has approved the special events planned by the Parks and Recreation Services Department. In the Council agenda packets is a copy of the proposed 2008 Special Events Calendar. Event details including time, date, event specifics and locations have been included with the calendar.

Fiscal Impact: None

Recommendation: Approve the proposed 2008-2009 Special Events Calendar for the City.

XVIII. ORDINANCES

- 9. **Waive the First Reading Beyond Title and Introduce Traffic Ordinance 43.209 Amending Chapter 100, V (Traffic) of the Milpitas Municipal Code (Staff Contact: Jaime Rodriguez, 586-3335)**

Background: the proposed Ordinance No. 43.209 will amend various sections of the Milpitas Municipal Code related to Traffic including:

SECTION V-100-15.05, ANGLE PARKING ON CERTAIN STREETS

No.	Action	Street	Segment
.1		Remove	Carlo St In front of US Post Office Building
.2	Remove	Arizona Av	East Side between Midwick Dr and Vienna Dr
.3	Add	Barber Ln	East Side between Bellew Dr to North End of Street
.4	Add	Ranch Dr	West of North McCarthy Blvd to East End of Street
.5	Add	Hammond Wy	West Side, North of Curtis Av for 1,500-FT

SECTION V-100-15.06, PARKING TIME LIMITED ON CERTAIN STREETS

No.	Action	Street	Segment	Duration	Time
.6	Remove	Thompson St	West Side from Great Mall Pkwy to Alvarez Common	4 Hours	7 am to 6 pm
.10	Add	Thompson St	West Side from Great Mall Pkwy to Machado St	10 Hours	7 am to 6 pm
.11	Add	Thompson St	East Side from Machado St to Alvarez Common	4 Hours	7 am to 6 pm

.12	Add	S Hillview Dr	East Side from Calaveras Blvd to Los Coches St	4 Hours	7 am to 6pm
.13	Add	Hammond Wy	West Side, North of Curtis Av for 1,500-FT	10 Hours	7am to 6pm

These recommendations were presented to and approved by the Transportation Subcommittee on November 13, 2007.

Fiscal Impact: Funds reimbursable through the Transportation Development Act.

Recommendations:

1. Waive the first reading beyond the title of Ordinance No. 43.209
2. Introduce Ordinance No. 43.209 amending Chapter 100, V (Traffic) of the Milpitas Municipal Code.

- * **10. Waive the Second Reading and Adopt Ordinance No. 65.136 Amending Building Code Administration, Adopt and Amend by Reference the 2007 Editions of the California Building Code, California Mechanical Code, California Electrical Code, California Plumbing Code, California Historical Building Code and California Existing Building Code; Adopt by Reference the 2006 Edition of the International Existing Building Code Appendix Chapter A2, A3, A4 and A5 (Staff Contact: Keyvan Irannejad, 586-3244)**

Background: At the November 27, 2007 City Council meeting, Ordinance No. 65.136 was introduced.

Ordinance No. 65.136 amends the 2007 California Building, Plumbing, Mechanical, Electrical, Historical and Existing Building Codes and includes local amendments for administrative requirements, architectural, structural, plumbing, mechanical and electrical provisions required due to local seismic and soil conditions. Local amendments include requirements for residential garage ventilation, spark arresters, wind loads at hillside, seismic engineering provisions for new and existing structures.

Fiscal Impact: None

Recommendations:

1. Waive the second reading of Ordinance No. 65.136 adopting specified local amendments to the 2007 California Building, Plumbing, Mechanical, Electrical, Historical and Existing Building Codes.
2. Adopt Ordinance No. 65.136.

XIX. RESOLUTIONS

- * **11. Adopt a Resolution Declaring Weeds on Certain Properties to be a Public Nuisance and Setting a Public Hearing for January 15, 2008 to Hear Objections (Staff Contact: Patricia Joki, 586-3370)**

Background: The Santa Clara County Agricultural Commissioner has notified the City that the County is commencing its Hazardous Vegetation Abatement (weed abatement) program for the forthcoming season. The County has requested the City adopt a resolution declaring weeds to be a public nuisance and to schedule a public hearing to hear objections to the proposed destruction or removal of weeds. A resolution declaring weeds on specific properties to be a public nuisance is adopted by the Council each year and gives affected property owners an opportunity to appear before the Council. The public hearing will be scheduled for January 15, 2008.

Fiscal Impact: None.

Recommendation: Adopt a resolution declaring weeds on specific properties to be a public nuisance and to set a public hearing for January 15, 2008.

12. Adopt Resolution Approving Extension of the Memorandum of Understanding with Milpitas Police Officers Association (MPOA) (Staff Contact: Carmen Valdez, 586-3086)

Background: The most recent Memorandum of Understanding with the Milpitas Police Officers' Association (MPOA) will be expiring on December 31, 2007. City representatives and representatives from MPOA met and conferred in good faith to negotiate a new one year contract. Agreement has been reached to amend the current Memorandum of Understanding with effective dates of January 1, 2008 to December 31, 2008. A copy of the recommended Side Letter and Appendix "A" are included in the City Council agenda packet.

Fiscal Impact: One year impact is \$464,131 for a 3% wage increase effective January 1, 2008.

Recommendation: Adopt a Resolution amending the current Memorandum of Understanding between the City of Milpitas and the Milpitas Police Officers Association (MPOA) to reflect the changes defined in the Side Letter dated December 5, 2007, and to extend the MOU through December 31, 2008.

*** 13. Adopt Resolution Amending City of Milpitas Classification Plans for the City Attorney's Office (Staff Contact: Mike Ogaz, 586-3040)**

Background: Periodically, amendments to the Classification Plan are required to account for organizational changes, equity adjustments to salary ranges, and the development of new classifications. The following proposed changes are the result of organizational changes/additions within the City Attorney's Office. On April 3, 2007, the City Council directed staff to move forward with in-house legal services versus contract services.

The City Attorney commenced in-house legal service on October 15, 2007 and now recommends creation of the following classifications in order to establish a full service City Attorney's Office. The current plan is to hire two persons this fiscal year, and then a third next fiscal year with full staffing to occur before the end of October 2008. While this plan contemplates adding only a total of three positions, four classifications are recommended for addition to allow for flexibility in implementation. The outline of this staffing plan was brought before the City Attorney Subcommittee for discussion in November.

The recommended classifications are:

<u>Title</u>	<u>Proposed Salary Range</u>
Assistant City Attorney	\$129,993.00 - \$158,007.00
Deputy City Attorney	\$102,527.00 - \$124,622.00
Paralegal	\$63,069.00 - \$76,661.00
Legal Assistant	\$62,604.00 - \$76,095.00

Included in the Council packet are the newly created job specifications and the salary ranges for each for City Council review.

Fiscal Impact: Annual fiscal impact including salaries and benefits is approximately \$561,089. Funding necessary for staffing for Fiscal Year 2007-08 is available in the City Attorney's budget.

Recommendation: Adopt a resolution amending the City of Milpitas Classification Plan to add the new classifications with the proposed recommended salary ranges listed for the City Attorney's Office staff.

* 14. **Adopt a Resolution for the Approval of a New Hillside Home Located at 826 Calaveras Ridge Drive “S” Zone No. (SZ2007-3) (Staff Contact: Judie Gilli, 586-3280)**

Background: The applicant is seeking approval for a new hillside house within the 18-lot Calaveras Country Estates Planned Unit Development (PUD 23.5). This 1.02 acre lot is one of two remaining vacant lots within the PUD. The height of the home would be 17 feet from finished grade to the ridge. The main floor plan includes three bedrooms, one master bedroom, a library, dining room, kitchen and a great room. The basement has an office, storage rooms and utility rooms. Vehicular access is achieved through a new driveway from Calaveras Ridge Drive consist of permeable concrete. Additional site improvements include landscaping and grading necessary to locate the proposed home. On November 14, 2007, the Planning Commission unanimously recommended the City Council approve the proposed project.

Fiscal Impact: None

Recommendation: Adopt a resolution for approval of a new hillside home located at 826 Calaveras Ridge Drive “S” Zone No. (SZ2007-3) subject to the Conditions of Approval listed in the Resolution.

* 15. **Adopt a Resolution Making Findings for Unexpended Development Fees and Receive the Status Report on the Development Fee Accounts (Staff Contact: Emma Karlen, 586-3145)**

Background: CA Government Code Section 66000 et seq. requires local agencies to provide an accounting of fees charged for development projects. Effective January 1, 1989, Assembly Bill 1600 required new accounting guidelines with respect to the imposition and use of such fees. Effective January 1, 1997, Senate Bill 1663 further amended and expanded the provisions of the Code with respect to the accounting and reporting requirements.

The City has two basic accounting and reporting responsibilities under the Government Code. Section 66001(d) requires that, five years after collecting a development fee subject to this code section and every five years thereafter, the local agency shall make findings with respect to any portion of the fee remaining unexpended, whether committed or uncommitted. If the required findings are not made, the unexpended funds shall be refunded. The findings must:

1. Identify the purpose of the fee;
2. Demonstrate a reasonable relationship between the fee and the purpose for which it was charged;
3. Identify all sources and amounts of funding anticipated to complete financing of incomplete improvements;
4. Designate the approximate dates on which these funding sources can be expected to be deposited into the appropriate account or fund.

When sufficient funds have been collected to complete financing on incomplete public improvements, the local agency has 180 days to identify an approximate date by which the construction of the public improvement will begin or else is required to refund the unexpended fees, including accrued interest, to the current owner of lots or units of the development project.

The second requirement set forth under Government Code Section 66006 provides that the City shall establish separate capital improvement accounts or funds for each improvement funded by project development fees. Any interest income earned by funds in such an account shall be deposited in such account. Each local agency is required, with 180 days after fiscal year end, for each separate account, to make available to the public the following information:

1. Brief description of the type of fee in the account;
2. The amount of the fee;
3. The account’s beginning and ending balance;
4. The amount of fees collected and the interest earned;

5. A description of the improvements on which the funds were expended and the amount expended on each improvement including the percentage of the improvement funded with development fees;
6. An approximate date by which the construction of a public improvement will begin if the local agency determines that sufficient funds have been collected to complete financing on the incomplete improvement;
7. A description of each inter-fund transfer or loan made from the account; and
8. The amount of any refunds made pursuant to Code Section 66001.

The City utilizes Traffic Impact Fee Fund and Storm Drain Development Fund to track these development related fees. Interest income is allocated to the Traffic Impact Fee Fund and Storm Drain Development Fund based on their respective monthly cash balances. Expenditures from these funds were in the form of capital improvement projects to either renovate existing facilities or maintain the existing level of service that is consistent with the General Plan due to increased demand related to the development project.

The status reports included in your agenda packet contain a six-year history from fiscal years 1997-98 through 2006-07 for the Traffic Impact Fee Fund and a four-year history for the Storm Drain Development Fund. (The City began to collect Storm Drain fee in FY 03-04; consequently there is only a four-year history). The reports showed the amount of fees collected each year, interest income, a brief description of the projects funded, the percentage of the projects funded by the developer fees, and the beginning and ending balance of the funds. The reports indicated that at the end of June 30, 2007, the City had approximately \$1.28 million in the Traffic Impact Fee Fund and \$768,000 in the Storm Drain Development Fee Fund. Inter-fund transfers were made to capital projects that are related to the collection of the fees. There have not been any loans made from the accounts. As of June 30, 2007, the City has not refunded any of the developers' fees.

Except for a portion of the traffic impact fees collected in FY 01-02, all the fees deposited in the Traffic Impact Fee Fund were collected less than five years ago. Included in the ending fund balance was \$169,100 unexpended traffic fees collected from two developers in FY 01-02. These fees are for the purpose of mitigating traffic impacts resulting from each of these developments. These fees remain unexpended due to incomplete funding to finance the projects. The City anticipates using these fees for two separate capital improvement projects:

\$75,600 will be used to build a future traffic signal at N. Main Street and Carlo Street, which will mitigate the traffic caused by the development and provide additional access. Along with the previously collected developer's fee, other funding sources will include Redevelopment bond proceeds and Street Fund. Total project cost is estimated to be \$320,000, approximately 23% will be funded from developer's fees. It is anticipated that construction for this project will be complete in Fiscal Year 2009.

The remaining \$93,500 will be used to build a future traffic signal located on McCarthy Blvd., mid-block between Ranch Drive North and Ranch Drive South. The traffic signal, directly adjacent to the developer's property, will mitigate the traffic impact caused by the development. The total funding of \$320,000 is incomplete until additional funding can be identified and collected from another development at this location. It is anticipated that construction may occur in Fiscal Year 2010.

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

Recommendation: Adopt a resolution of the City of Milpitas making findings for unexpended development fees and receive the status reports on the development fee accounts.

- * 16. **Approve Agreement with Municipal Revenue Advisors for Sales Tax and Use Tax Consulting Services and Adopt a Resolution Designating Municipal Revenue Advisors as an**

Authorized Representative to Examine Sales and Use Tax Records (Staff Contact: Emma Karlen, 586-3145)

Background: Within the City of Milpitas, there are many corporations or organizations that do not have their point-of-sale in the City and consequently do not generate sales tax revenue locally. These companies are still frequently required to pay use tax on the storage, use, or consumption of tangible personal properties. For example, when a company buys products from out of state vendors to be used in Milpitas, these purchases are still subject to 8.25% use tax which the vendors will have to remit to the California State Board of Equalization. The only difference is when the use tax was remitted by the vendors, the State Board of Equalization (SBE) typically allocated the local share to the County pool from which the City received a very small percentage of that revenue. The City has an opportunity to work with Municipal Revenue Advisors (MRA) to examine the purchase records of the local businesses as well the City's to develop strategies to change the use tax reporting method so that the City can receive 100% of the local share of the use tax. The goals are to enhance sales/use tax revenues and build relationships with businesses in Milpitas. MRA is an experienced consultant that has partnered with other cities to work with their local businesses to change their use tax reporting methods. Except for the initial set up fees of \$2,500 to review the City's purchase and vendors' records, MRA's services will be compensated from a percentage of the revenues recovered. Approval of the agreement with MRA will require the City Council to adopt a resolution to designate the consultant as an authorized representative of the City to examine sales and use tax records.

Fiscal Impact: \$2,500 initial fees plus contingent fees on any new sales/use tax revenues. The City may gain use tax revenue that is not currently allocated 100% to the City.

Recommendation: Authorize and approve the agreement with Municipal Revenue Advisors for sales tax and use tax consulting services and adopt a resolution designating the consultant MRA as an authorized representative of the City to examine sales and use tax records.

XX. BIDS AND CONTRACTS

- * 17. **Approve Amendment No. 2 to the Agreement for Consulting Services with Dyett & Bhatia Urban and Regional Planners (Staff Contact: James Lindsay, 586-3273)**

Background: The City of Milpitas entered into an agreement with Dyett & Bhatia on August 16, 2005 to conduct Phase II of the Transit Area Specific Plan for the ±400-acre area around the light rail and future Montague BART station. The original term of the agreement was two years and Amendment No. 1 extended the term by six months to December 31, 2007. Amendment No. 2 extends the term of the contract four additional months to April 30, 2008 to provide the time necessary to bring the planning documents and financing strategy forward to the City Council for approval.

Fiscal Impact: None. Total compensation for this work (\$672,635) does not change with this amendment.

Recommendation: Approve Amendment No. 2 to the Agreement for Consulting Services with Dyett & Bhatia Urban and Regional Planners for work related to the Transit Area Specific Plan.

- * 18. **Authorize the City Manager to Execute Contract with Cannon Design Group to Provide As Needed Design Review Services (Staff Contact: James Lindsay, 586-3273)**

Background: The Cannon Design Group provides services to more than ten Bay Area cities by assisting them in reviewing the architectural design of new projects. This peer review service is very effective in providing design review comments given the experience of the Cannon Design Group. Planning staff will incorporate the design review suggestions into their comment letters and, if necessary, into the staff reports. The proposed contract for as needed design review

services is a two year contract for the not-to-exceed amount of \$30,000 per year. The dollar amount of the contract is an estimate based on previous year's usage.

Fiscal Impact: This contract will be funded out of the Planning Division's operating budget but the funds will be recovered from the Project Job Accounts established for new development projects. Therefore, there should be no fiscal impact with this agreement.

Recommendation: Authorize the City Manager to execute a two year contract with Cannon Design Group to provide as needed design review services for the not-to-exceed amount of \$30,000 per year, subject to approval as to form by the City Attorney.

- * 19. **Authorize the City Engineer to Execute Contract Change Order No. 3 to the Contract with Anderson Pacific Engineering Construction for the Main Sewage Pump Station, Project No. 6103 (Staff Contact: Greg Armendariz, 586-3317)**

Background: The City Council awarded this project to Anderson Pacific Engineering Construction, Inc. on December 5, 2006. Construction is underway and the project is on schedule and within budget. The project consists of constructing a new underground wet well with submersible pumps and inline grinders, a new control building with electrical room, site grading, drainage improvements, and lighting. The work includes concrete work, asphalt paving, electrical, mechanical, and piping. The completion date is October 2008.

Contract Change Order No. 3 adds electrical wiring and increases conduit size for the pump station power and control circuits at a cost of \$72,072.13. These changes have been reviewed by the designer and construction manager and are needed for the efficient operation of the station. In addition, Contract Change Order No. 3 includes upgrading locks and hinges in the Main Pump Station Control Building with additional kick plates, doorstops and panic hardware at a cost of \$8,954.41. The total cost of the change order is \$81,026.54. Staff reviewed the cost and finds it to be reasonable.

Fiscal Impact: None.

Recommendation: Authorize the City Engineer to execute Contract Change Order No. 3 to the contract with Anderson Pacific Engineering Construction in the amount of \$81,026.54 for the Main Sewage Pump Station, Project No. 6103.

- * 20. **Approve Consultant Agreement with LFR Inc. for Design of the Singley Area Street Rehabilitation and Whittier Street Improvements Street Resurfacing Project 2008, Project No. 4242 (Staff Contact: Andrew Brozyna, 586-3315)**

Background: In accordance with the City's consultant selection procedure, LFR Inc. has been selected to perform the design services for the Singley Area Street Rehabilitation and Whittier Street Improvements, Project No. 4242. The work consists of replacing existing curb and gutters, driveways, ramps, sidewalk and asphalt pavement section with new facilities; installation of asphalt concrete pavement and slurry seal; and installation of storm drain pipes, drainage inlets and subsurface drainage systems. The project is located on various roadway segments in the Singley Area and Whittier Street. Staff has negotiated a scope and fee for these services for an amount not to exceed \$85,020, which is considered reasonable for this work. This project provides both roadway and drainage improvements in various streets in the Singley area, as well as Whittier Street in the Manor area.

Fiscal Impact: There are sufficient funds available in the project budget to cover the cost.

Recommendation: Approve and authorize the City Manager to execute the consultant agreement with LFR Inc. in an amount not-to-exceed \$85,020 for the design of Singley Area Street Rehabilitation and Whittier Street Improvements Street Resurfacing Project 2008, Project No. 4242, subject to approval as to form by the City Attorney.

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, JANUARY 15, 2008 AT 7:00 P.M.**