



**MILPITAS CITY COUNCIL MEETING AGENDA  
JUNE 17, 2008**

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**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 OF CITY COUNCIL**  
  
**CONFERENCE WITH LABOR NEGOTIATOR - COLLECTIVE BARGAINING**  
(Pursuant to CA Government Code §54957.6) City Negotiator: Carmen Valdez  
Employee Group: Milpitas Professional and Technical Group (ProTech)  
Under Negotiation: Wages, Hours, Benefits, and Working Conditions
- III. CLOSED SESSION ANNOUNCEMENT:** Report on action taken in Closed Session, if required pursuant to CA Govt. Code §54957.1, including the vote on abstention of each member present
- IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)**
- V. INVOCATION (Councilmember Gomez)**
- VI. APPROVAL OF COUNCIL MEETING MINUTES – June 3, 2008**
- VII. SCHEDULE OF MEETINGS - Council Calendars for June and July 2008**
- VIII. PRESENTATION - Parks & Recreation Month - July 2008**
- 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**
- XII. APPROVAL OF AGENDA**
- XIII. CONSENT CALENDAR (Items with asterisk\*)**
- XIV. PUBLIC HEARINGS**
  - 1. Considering an Entertainment Event Permit for Circus Vargas at Great Mall scheduled July 10-14, 2008 (Staff Contact: Mary Lavelle, 586-3001)**
  - 2. Considering an Entertainment Event Permit and Request to Waive Fees for "Celebrate Milpitas" Festival August 16-17, 2008 Sponsored by the Milpitas Chamber of Commerce (Staff Contact: Mary Lavelle, 586-3001)**

3. **Adopt Resolution Approving Annual Engineer's Report and Levying of Assessment for Landscaping and Lighting Maintenance Assessment District No. 95-1, McCarthy Ranch, Project No. 9474 (Staff Contact: Robert Wang, 586-3327)**
4. **Adopt Resolution Approving Annual Engineer's Report and Levying of Assessment for Landscaping and Lighting Maintenance Assessment District No. 98-1, Sinclair Horizon, Project No. 9489 (Staff Contact: Robert Wang, 586-3327)**
5. **Introduce Ordinance No. 38.778 to Change Zoning of a 1.17 Acre Parcel Located at the End of Hanson Court from Agriculture (A) to Industrial Park (MP) (Staff Contact: James Lindsay, 586-3273)**

**XV. UNFINISHED BUSINESS**

- \* 6. **Accept Annual Odor Control Report and Approve the Updated Maintenance-Level Odor Control Action Plan (Staff Contact: Kathleen Phalen, 586-3345)**

**XVI. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING**

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

**RA2. Roll Call**

**RA3. Approval of Minutes (June 3, 2008)**

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

**RA5. Receive Progress Report on the new Milpitas Library, Midtown East Parking Garage, and North Main Streetscape Projects, Approve a Contract with Artist Cork Marcheschi for the New Library Tower Art, and Approve Agreement with the Milpitas Historical Society for Display of the Fire Truck within the City Parking Garage, Projects No. 8161, No. 8162, and No. 8165 (Staff Contact: Steve Erickson, 586-3414)**

**RA6. Approve Amendments to the Terms of the Memorandum of Understanding with Apton Properties, LLC (Staff Contacts: Felix Reliford, 586-3071, and James Lindsay, 586-3273)**

\* **RA7. Direct Staff to Prepare Legal Documents and Perform Other Actions Necessary for Possible Amendment of the Redevelopment Plan for the Great Mall Project Area, Adopt a Resolution for Engagement of Outside Special Project Redevelopment Counsel, and Appropriate \$42,075 to the FY2007-08 Agency Counsel Budget (Staff Contact: Diana Whitecar, 586-3059)**

\***RA8. Approve Certificate of Completion for Certain Residential Units within Tract No. 9698 for KB Home, Project No. 3160 (Staff Contact: Robert Wang, 586-3327)**

\***RA9. Approve Amendment No. 1 to the Agreement for Professional Financial Consulting Services with Economic & Planning Systems (Staff Contact: James Lindsay, 586-3273)**

\***RA10. Approve Plans and Specifications, Authorize the Advertisement for Bid Proposals, and Authorize Executive Director to Execute Construction Contract for Corporation Yard Canopy, Project No. 8183 (Staff Contact: Jeff Leung, 586-3326)**

\***RA11. Award Construction Contract to Valley Slurry Seal Co. for the Slurry Seal Project FY 2008-09, Projects No. 8194 and No. 6073 (Staff Contact: Jeff Leung, 586-3326)**

\***RA12. Award Construction Contract to Granite Construction Co. for the Singley Area Street Rehabilitation Phase V, Project No. 8193 (Staff Contact: Jeff Leung, 586-3326)**

**\*RA13. Authorize the Director to Execute Amendment No. 4 to the Agreement with Consolidated Engineering Laboratories (CEL) for Various Projects (Staff Contact: Shelton Sawyer, 586-3407)**

**\*RA14. Adopt Resolutions Approving the Annual Investment Policy (Staff Contact: Emma Karlen, 586-3145)**

**RA15. Agency Adjournment**

**XVII. REPORT OF OFFICER AND COMMISSION**

**City Council**

**\* 7. Consider Mayor's Recommendations for Re-appointments to Milpitas Commissions (Contact: Mayor Esteves, 586-3029)**

**Economic Development Commission**

**\* 8. Authorize Letter in Support of Federal Legislation HR 6049 Renewable Energy and Job Creation Act of 2008 (Staff Contact: Diana Whitecar, 586-3059)**

**XVIII. NEW BUSINESS**

**\* 9. Approve One Youth Sports Assistance Fund Grant Request (Staff Contact: Aaron Bueno, 586-3226)**

**XIX. ORDINANCE**

**\* 10. Waive the Second Reading and Adopt Ordinance No. 38.777 Amending the Zoning Ordinance and the City's Sectional Zoning Map (Staff Contact: James Lindsay, 586-3273)**

**XX. BIDS AND CONTRACTS**

**\* 11. Approve the Fourth Amendment to the Senior Nutrition Contract with Compass Group USA, Inc. (Bateman Division) and Authorize Payment (Staff Contact: Jennifer Tagalog, 586-2786)**

**\* 12. Approve the Senior Nutrition Contract with the County of Santa Clara (Social Services) (Staff Contact: Jennifer Tagalog, 586-2786)**

**\* 13. Approve the Fourth Amendment to the Contract with New Orient Restaurant and Authorize Payment (Staff Contact: Jennifer Tagalog, 586-2786)**

**\* 14. Approve Agreement Renewal with California State Association of Counties-Excess Insurance Authority (CSAC-EIA) for the Employee Assistance Program Services Purchased through Managed Health Network (MHN) for City of Milpitas Employees (Staff Contact: Carmen Valdez, 586-3086)**

**\* 15. Amend Master Services Agreement with Southern California Risk Management Association (SCRMA) to Extend the Current Agreement through June 30, 2009 (Staff Contact: Carmen Valdez, 586-3086)**

**\* 16. Approve Contract Renewal for Excess Workers' Compensation Insurance (Staff Contact: Carmen Valdez, 586-3086)**

**\* 17. Approve and Authorize City Manager to Execute Amendment No. 1 to the Agreement with Randall Funding and Development, Inc., for On-Call Services for Various Capital Improvement Projects (Staff Contact: Greg Armendariz, 586-3317)**

- \* 18. **Approve Plans and Specifications and Authorize the Advertisement for Bid Proposals for Water System Air Relief Valve Modifications, Project No. 7086 - Phase II (Staff Contact: Jeff Leung, 586-3326)**
- \* 19. **Approve Plans and Specifications and Authorize the Advertisement for Bid Proposals for Venus Pump Station Rehabilitation, Project No. 6101 (Staff Contact: Jeff Leung, 586-3326)**
- \* 20. **Authorize the City Engineer to Execute a Contract Change Order with DeSilva Gates for Street Resurfacing 2008, Projects No. 4242, No. 6073 and No. 8194 (Staff Contact: Jeff Leung, 586-3326)**
- \* 21. **Approve Amendment No. 2 to the Agreement for Professional Planning Services with Metropolitan Planning Group (Staff Contact: Sheldon Ah Sing, 586-3278)**
- \* 22. **Approve Amendment No. 1 to the Contract for Attorney Services with Hopkins Carley (Staff Contact: Michael Ogaz, 586-3040)**
- \* 23. **Approve Amendment No. 3 to the Contract for Attorney Services with Roy C. Abrams, Esq. (Staff Contact: Michael Ogaz, 586-3040)**
- \* 24. **Authorize the City Engineer to Execute a Contract Change Order No. 8 for the Main Sewage Pump Station, Project No. 6103 (Staff Contact: Greg Armendariz, 586-3317)**
- \* 25. **Award the Bid to First Alarm and Authorize the City Manager to Execute a Contract for Park Security Services (Staff Contact: Chris Schroeder, 586-3161)**
- \* 26. **Approve Agreement with Municipal Revenue Advisors for Transient Occupancy Tax Recovery Services (Staff Contact: Emma Karlen, 586-3145)**
- \* 27. **Award the Bid to Citation Press and Authorize the City Manager to Execute a Contract for Publishing the Recreation Services Activity Guide (Staff Contact: Chris Schroeder, 586-3161)**
- \* 28. **Approve Amendment No. 2 to the McCarthy Ranch Landscape Maintenance Service Contract with Jensen Landscape Services, Inc. (Staff Contact: Chris Schroeder, 586-3161)**

**XXI. CLAIM AND DEMAND**

- \* 29. **Authorize Budget Transfer from Sponsorship Child Care to Preschool Office budget (Staff Contact: Toby Librande, 586-3077)**

**XXII. ADJOURNMENT**

**NEXT REGULAR MEETING  
TUESDAY, AUGUST 5, 2008**

**NO CITY COUNCIL MEETINGS SCHEDULED IN JULY**

**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](mailto: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](http://www.ci.milpitas.ca.gov)*

Materials related to an item on this Agenda submitted to the City Council /Redevelopment Agency after initial distribution of the agenda packet, are available for public inspection at the City Clerk's Office/Information Desk at Milpitas City Hall, 455 East Calaveras Blvd., Milpitas, CA95035, and at the Milpitas Library during normal business hours.

**BECOME A CITY COMMISSIONER!**

Currently, there are openings for the:

*Arts Commission (alternate)*

*Community Advisory Commission*

*Economic Development Commission (Hotel Rep)*

*Mobile Home Park Rental Review Board*

*Recycling and Source Reduction Advisory Commission (alternate)*

*Sister Cities Commission*

*Telecommunications Commission*

Applications are available online at [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov) or at the City Hall Information Desk.

Contact the City Clerk's office (586-3003) for more information.

*If you need assistance, per the Americans with Disabilities Act, for any City of Milpitas public meeting, call the City Clerk at 586-3001 or send an email to [mlavelle@ci.milpitas.ca.gov](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. TDD phone number (408) 586-3013.*

## AGENDA REPORTS

### XVI. PUBLIC HEARINGS

#### 1. **Considering an Entertainment Event Permit for Circus Vargas at Great Mall scheduled July 10-14, 2008 (Staff Contact: Mary Lavelle, 586-3001)**

**Background:** Tabares Entertainment dba "Circus Vargas" submitted an application for an Entertainment Event Permit to host a circus performance at several times over the dates of Thursday, July 10 through Monday, July 14, 2008. The application was reviewed and approved by City departments and the public hearing advertised as required by the municipal code. A current certificate of insurance has been received.

This is a new request for a summertime circus event to be enjoyed by families in Milpitas and the surrounding area. The Great Mall has authorized this special activity on its property.

Circus Vargas also requested a waiver of the Municipal Code §I-5-4.01 requirement that allows only one event within a 30-day period, due to the fact that there is another permit authorized by Council in July.

**Recommendations:**

1. Close the Public Hearing for comments, after receiving testimony.
2. Waive Milpitas Municipal Code I-5-4.01 to allow more than one event within 30 days.
3. Approve the Entertainment Event Permit for "Circus Vargas" to be held July 10-14, 2008, as requested by Tabares Entertainment Inc., subject to the conditions provided by City staff.

#### 2. **Considering an Entertainment Event Permit and Request to Waive Fees for "Celebrate Milpitas" Festival August 16-17, 2008 Sponsored by the Milpitas Chamber of Commerce (Staff Contact: Mary Lavelle, 586-3001)**

**Background:** The Milpitas Chamber of Commerce submitted an application for an Entertainment Event Permit to hold the annual "Celebrate Milpitas" Festival (formerly the Art & Wine Summer Festival) along S. Milpitas Boulevard between Los Coches and Turquoise Streets and continuing west on Los Coches on Saturday, August 16, and Sunday, August 17 from 10:00 a.m. to 6:00 p.m. each day. The application was reviewed and approved by City departments and the public hearing advertised as required by the municipal code.

The Chamber requests fee waivers for business license requirements for vendors, the fire inspection fee, and electrical permit fees. City Council has the authority to exempt vendors from the requirements for the business license or other related fees, and has waived the fees and approved the Entertainment Event Permit in previous years.

Additionally requested is use of the City's portable entertainment stage over two days. The Chamber requests on behalf of "South Bay Kids" music performing group to use the City's portable stage and a waiver of the \$350 daily rental fee, \$750 towing cost and \$1000 deposit.

Also, similar to 2007, the Chamber with City staff, is pursuing a permit from the state Department of Transportation (Caltrans) to be granted permission to close Highway 237/Calaveras Blvd. at Milpitas Blvd. Such a permit would allow passersby to be made aware of the event, and to note proper traffic flow for the duration of the weekend.

**Recommendations:**

1. Close the Public Hearing for comments, after receiving testimony.
2. Waive the business license fees (typically \$50 per vendor), electrical permit fee (approximately \$144), fire inspection fee (approximately \$1,729), and fees related to the portable entertainment stage (\$750 rental, \$750 towing plus deposit) for South Bay Kids.

3.. Approve Entertainment Event Permit for the Chamber of Commerce “Celebrate Milpitas” festival on August 16-17, 2008, subject to the conditions provided by City staff.

**3. Adopt Resolution Approving Annual Engineer’s Report and Levying of Assessment for Landscaping and Lighting Maintenance Assessment District No. 95-1, McCarthy Ranch, Project No. 9474 (Staff Contact: Robert Wang, 586-3327)**

**Background:** On June 3, 2008, the City Council adopted Resolution of Intention No. 7765 to levy annual assessments for the Landscaping and Lighting Maintenance Assessment District No. 95-1. The District provides for the servicing and maintaining the public landscaping and additional lighting along North McCarthy Boulevard and the Gateway feature on Ranch Drive. An annual public hearing is necessary to adopt the Annual Engineer’s Report to provide funds for the district.

The total assessment for the district in the Annual Engineer’s Report is \$274,480.60 for FY 2008-09. Assessment for Fiscal Year 2008-09 is within the previously approved range of assessments.

**Fiscal Impact:** None.

**Recommendations:**

1. Open the public hearing, receive any written protests, and hear testimony.
2. Move to close the public hearing.
3. Adopt Resolution approving Annual Engineer’s Report, Confirm Diagram and assessment and ordering levy of assessments for Fiscal Year 2008-09 for Landscaping and Lighting Maintenance Assessment District No. 95-1, McCarthy Ranch.

**4. Adopt Resolution Approving Annual Engineer’s Report and Levying of Assessment for Landscaping and Lighting Maintenance Assessment District No. 98-1, Sinclair Horizon, Project No. 9489 (Staff Contact: Robert Wang, 586-3327)**

**Background:** On June 3, 2008, the City Council adopted Resolution of Intention No. 7766 to levy annual assessments for the Landscaping and Lighting Maintenance Assessment District No. 98-1. The District provides for the servicing and maintaining the public landscaping along Sinclair Frontage Road, Los Coches Creek and Berryessa Creek, abutting the Sinclair Horizon residential subdivision. An annual public hearing is necessary to adopt the Annual Engineer’s Report to provide funds for the district.

The total assessment for the district in the Annual Engineer’s Report is \$35,562.24 for FY 2008-09. Assessment for Fiscal Year 2008-09 is within the previously approved range of assessments and includes the application of the approved annual Consumer Price Index (CPI) escalation.

**Fiscal Impact:** None.

**Recommendation:**

1. Open the public hearing, receive any written protests, and hear testimony.
2. Move to close the public hearing.
3. Adopt a Resolution approving Annual Engineer’s Report, Confirm Diagram and assessment and ordering levy of assessments for Fiscal Year 2008-09 for the Landscaping and Lighting Maintenance Assessment District No. 98-1, Sinclair Horizon.

**5. Introduce Ordinance No. 38.778 to Change Zoning of a 1.17 Acre Parcel Located at the End of Hanson Court from Agriculture (A) to Industrial Park (MP) (Staff Contact: James Lindsay, 586-3273)**

**Background:** The property owner has submitted an application requesting the 1.17 acre parcel (APN 28-17-001) located at the end of Hanson Court be rezoned from Agricultural to Industrial

Park. All the parcels on the east side of Hanson Court (including the subject site) have an Industrial Park land use designation in the General Plan. The same parcels are within the Industrial Park (MP) zoning district except for the subject site. No applications for developing the parcel have been submitted at this time.

**Fiscal Impact:** None.

**Recommendations:**

1. Close the public hearing following any public hearing testimony.
2. Move to waive the first reading of Ordinance No. 38.778 beyond the title.
3. Introduce Ordinance No. 38.778 related to rezoning APN 28-17-001.

**XVII. UNFINISHED BUSINESS**

**\* 6. Accept Annual Odor Control Report and Approve the Updated Maintenance-Level Odor Control Action Plan (Staff Contact: Kathleen Phalen, 586-3345)**

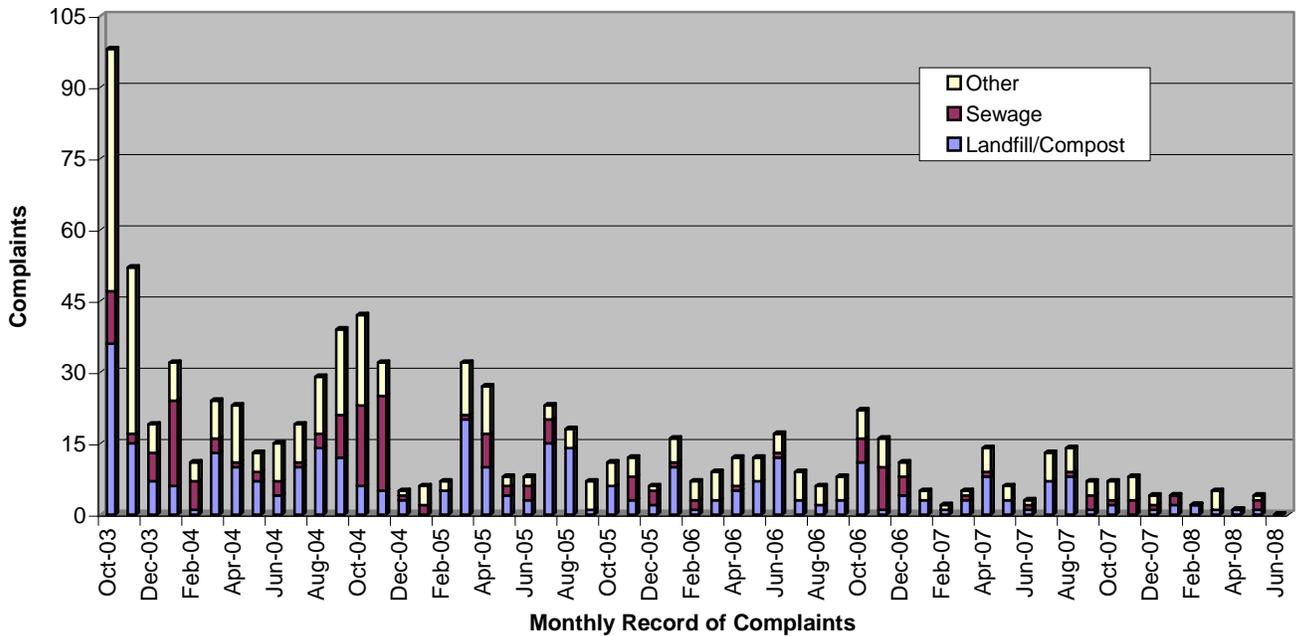
**Background:** On October 7, 2003, the City Council held a public hearing to receive comment on the issue of odors emanating from the waste treatment and disposal facilities sited outside the City's western boundary. Council provided staff direction to develop an odor action plan with the objective of reducing odor incidents by obtaining the cooperation and coordination of stakeholders and simplifying the complaint reporting process. The plan includes a streamlined rapid notification process by which the public calls 1-800-334-6367 to make a report to the Bay Area Air Quality Management District (BAAQMD), BAAQMD dispatches the call to potential generators and staff, BAAQMD inspectors respond to verify the source, and generators respond to control the source. The plan also calls for the primary generators to monitor meteorological conditions before conducting activities that can cause odor incidents in the City.

Upon Council's acceptance of this plan, staff continued to monitor the odor control process and provide the Council quarterly reports for the next three years. These reports indicated that complaints were steadily declining when compared year-to-year. At its June 19, 2007 meeting, Council directed that the reporting frequency be reduced from quarterly to annual, but that all other provisions of the action plan be continued, including use of the BAAQMD complaint phone number and the rapid notification process.

**Annual Odor Control Report:** In the period from June 2007 through May 2008, the BAAQMD complaint line received 70 verified complaints, as shown on the following chart. This compares to 372 complaints in the first year of monitoring, 215 in the second year, and 124 in the third year. The number of complaints received this past year is not necessarily directly related to the actual number of odor incidents because some residents may have become frustrated with the process and so stopped reporting incidents. However, staff believes that a substantial portion of the decrease in reports can be attributed to continued monitoring and to the proactive and reactive efforts of the generators. Generators have made substantial efforts to change and control their processes to reduce odors and limit the travel of odors into the City of Milpitas. The City's concerted effort to stimulate the facilities to improve their best management practices has brought the number of complaint levels to a baseline level.

(Diagram on next page)

**Oct 2003 - May 2008 Odor Complaint Summary**



**Maintenance-Level Odor Control Action Plan:** Staff recommends transitioning to a maintenance-level odor control action plan that will continue the rapid notification and complaint tracking processes. A copy of this plan is included in the Council packet. The objective of this plan is to ensure that odor generators continue to maintain their practices and controls to keep odor incidents as low as feasible. The BAAQMD rapid notification process will remain in effect and staff will continue tracking complaints to ensure that they remain at the currently attained baseline level. If complaints ever exceed three within a two-day period or fifteen within a thirty-day period, staff would act to determine the cause and seek reactive control in accordance with the plan’s Significant Incident Response Plan. Under the maintenance-level plan, staff will not present annual reports to Council, but will provide Council an update if it is necessary to implement the Significant Incident Response Plan. Staff will update this plan as needed to keep the processes and stakeholder contact information current.

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

**Recommendation:** Accept the Annual Odor Control Report and Approve the Updated Maintenance-Level Odor Control Action Plan.

**XVI. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING**

- RA1. Call to Order by the Mayor/Chair**
- RA2. Roll Call**
- RA3. Approval of Minutes (June 3, 2008)**
- RA4. Approval of Agenda and Consent Calendar (Items with asterisk\*)**
- RA5. Receive Progress Report on the new Milpitas Library, Midtown East Parking Garage, and North Main Streetscape Projects, Approve a Contract with Artist Cork Marcheschi for the New Library Tower Art, and Approve Agreement with the Milpitas Historical Society for Display of the Fire Truck within the City Parking Garage, Projects No. 8161, No. 8162, and No. 8165 (Staff Contact: Steve Erickson, 586-3414)**

**Background:** Construction continues on the new Milpitas Library and Streetscape projects. Staff will provide a brief presentation on their progress at the Council meeting.

### **Library, Project No. 8161**

S. J. Amoroso continues with installation of drywall, mechanical, electrical, and plumbing fixtures. Exterior site work around the perimeter of the library in preparation for final paving, concrete flat work, and landscaping is underway. The furniture and casework manufacturers are in the shop drawing phase in preparation for production.

Last November, the Public Art Committee (PAC) recommended the City Council approve a contract with Rebecca Bollinger to provide artwork for the new library south tower. Ms. Bollinger was one of three artists chosen to produce an art piece for the tower. Since that time, she submitted a letter withdrawing from the project due to the complexities with her proposed design as well as working within the confines of the existing library structure and its construction schedule.

### **Tower Art**

The Public Art Committee now recommends the approval of a contract with artist Cork Marcheschi to provide art for the library south tower. This recommendation was reviewed and approved by the Library Subcommittee on May 27. Mr. Cork Marcheschi's artwork was one of the three tower art pieces also considered by the PAC last November. Mr. Marcheschi's art can be described as a mobile consisting of 48 to 50 hanging objects dispersed throughout the south tower space. The objects will be suspended from the tower structure by stainless steel cables of varying length. The hanging objects will be constructed of an aggregate of multi-colored translucent plastic and dichromatic glass shapes.

Costs associated with the design, fabrication, and installation of the tower art will include the following: \$100,000 for a contract with the artist to produce and install the art, approximately \$19,000 for installation of a uni-strut and threaded rod support system installed by the library contractor, and approximately \$6,000 for coordination and design assistance by the library architect. Last December 11, 2007, the Council approved an amount up to \$20,000 with Group 4 Architecture for coordination and design assistance between the tower art and the library project. The cost to fabricate and install the art, install the uni-strut and threaded rod support system, and library architect design coordination will be funded by the Public Art Fund and will not impact the library project budget.

Staff recommends the approval of a contract with artist Cork Marcheschi to fabricate and install hanging art in the new library south tower. The proposed contract is included in the Council agenda packet for review.

### **Plaza Art**

Staff and artist Brian Goggin were not able to negotiate a final contract for the fabrication and installation of the Terrapedia artwork within the library plaza. The artist was unwilling to complete the work for the budget approved by the City Council last December 11, 2007, and not interested in proceeding. In May, the PAC voted to discontinue working with Mr. Goggin. The Library Subcommittee accepted this recommendation on May 27 and with the concurrence of PAC members present, agreed to pursue artwork for the library plaza area at a future date after completion of the library.

### **Fire Truck Display**

Staff and the Milpitas Historical Society met on May 23 and reached agreement on providing a display for their 1932 GMC fire truck within the City's parking garage. Staff recommends proceeding with the original 3'-6" high steel railing around the truck (presented to Council previously), which will include a perimeter security system on the inside of the railing to discourage unauthorized access. The Historical Society will provide an alarm system on the truck

and will carry liability insurance coverage on the truck of at least \$100,000, which covers the City's property damage insurance deductible.

Under this agreement, the City/Agency will not be responsible for any damage or vandalism to the truck, and the Historical Society will provide routine maintenance and cleaning of the vehicle and display space. The estimated cost to provide the display enclosure includes \$25,000 for the steel railing and \$10,000 for the design and installation of a security system for the display. Costs associated with the truck display will be funded by the Parking Garage Project No. 8161. This recommendation was reviewed and approved by the Council's Library Subcommittee on May 27.

Staff recommends the approval of an agreement between the City and the Historical Society specifying a minimum term of display, maintenance, storage, and insurance requirements for the truck, and the proposed agreement is included in the Council agenda packets for review.

**N. Main Streetscape, Project No. 8165**

JJR Construction continues work on the first phase of the N. Main Streetscape projects from Weller Lane to the 237-off ramp. Minor work continues in preparation for project completion in early July.

**Fiscal Impact:** None.

**Recommendations:**

1. Receive Progress Report on the new Milpitas Library, Midtown East Parking Garage, North Main Streetscape Projects No. 8161, No. 8162, and No. 8165.
2. Authorize the Executive Director to execute a contract with artist Cork Marcheschi for an amount not to exceed \$100,000 for the fabrication and installation of art for the new library south tower.
3. Direct staff to cease negotiation with artist Brian Goggin for the Terrepedia artwork at the library plaza, and to consider plaza artwork in the future after completion and opening of the new library.
4. Authorize the Agency Executive Director to execute an agreement between the City/Agency and the Milpitas Historical Society for display of the 1932 GMC fire truck, within the City's Midtown East Parking Garage.

**RA6. Approve Amendments to the Terms of the Memorandum of Understanding with Apton Properties, LLC (Staff Contacts: Felix Reliford, 586-3071, and James Lindsay, 586-3273)**

**Background:** Apton Properties, LLC entered into an Owner Participation Agreement (OPA) with the Milpitas Redevelopment Agency in October 2004. The purpose of the OPA is to assist in the provision of affordable housing for 9 very-low and 10 moderate income households within the Apton Plaza mixed use project proposed for the northeast corner of North Main Street and Weller Lane. The initial terms of the OPA were approved via a Memorandum of Understanding (MOU) between the Agency and the applicant in May 2004. The OPA has been amended twice since the original approval; Amendment No. 1 (December 2004) changed the project description to acknowledge the units would be sold as for-sale condominiums and Amendment No. 2 (August 2005) reduced the number of residential units from 96 to 93. On June 3, 2008, the City received a request from the applicant to amend the MOU (and the OPA at a future meeting) to change the project description and modify the terms of the Agency's financial participation.

Original MOU Terms	Apton Properties Proposed Modifications
<i>Project Description</i>	
93 for-sale condominium units - 9 very low/10 moderate income units (20%) - 74 market rate units (no State tax credit financing)	93 apartment units - 12 extremely low / 43 very low income units (60%) - 38 market rate units (State tax credit financing for affordable units)

\$22.4 million in assessed value resulting in over \$118,000 per year in tax-increment coming to the Redevelopment Agency	Assuming the assessed value continues to be \$22.4 million, the Agency will only receive approximately 40% of the projected tax-increment due to 60% of the units receiving tax credits.
<b><i>Affordable Housing Assistance</i></b>	
\$852,560 grant for construction assistance and payment of impact fees.	No grants proposed
\$378,000 loan amortized over 20 years at a fixed rate of 5.25%.	\$1,230,560 loan with payments from half of the surplus of the project's residual receipts at a fixed rate of 5.00%.

The Agency has already provided \$6,239 of the \$852,560 grant amount in the form of Private Job payments. Therefore, staff is recommending the total financial assistance to the project be adjusted accordingly. The modifications do require changes to the conditions of approval necessitating review by the Planning Commission and City Council prior to the approval of any amendments to the OPA. The applicant is only seeking approval of the modified MOU terms due to an upcoming application deadline for the State low-income housing tax credits.

**Analysis**

Staff does not support the applicant's request to repay the loan from the surplus of residual receipts because the timely loan repayment becomes dependent on the financial performance of the project. This could result in no payments being received for several years. There is also the issue of lost tax-increment to the Redevelopment Agency projected at \$2.5 million in current value over the next 35 years, resulting from 60% of the project being financed by State tax credits. However, the additional 55 extremely low and very low income units do help the Agency meet its obligation to ensure 6% of all units within the Project Area are affordable to very-low income households. Staff recommends the following modifications to the applicant's request:

- Provide a \$1,224,321 loan to the project (amount requested minus the funds spent to date) amortized over 30 years at a fixed rate of 5.00% for the payment of development impact fees.
- Mitigate the projected loss of tax-increment by reimbursing the Agency's Redevelopment Fund \$2.5 million from the Agency's Housing Fund upon completion of the project.

Any adjustments to the MOU, once approved, would be need to be incorporated into an amended OPA that would be brought back to the Agency for approval.

**Fiscal Impact:** With the adjustments recommended by City staff there will be no fiscal impact to the Redevelopment Agency.

**Recommendation:** Approve the amendments to the terms of the original May 2004 Memorandum of Understanding with Apton Properties, LLC as recommended by staff.

- \* **RA7. Direct Staff to Prepare Legal Documents and Perform Other Actions Necessary for Possible Amendment of the Redevelopment Plan for the Great Mall Project Area, Adopt a Resolution for Engagement of Outside Special Project Redevelopment Counsel, and Appropriate \$42,075 to the FY2007-08 Agency Counsel Budget (Staff Contact: Diana Whitecar, 586-3059)**

**Background:** The Great Mall Redevelopment Project Area, comprised of 150 acres, was created in 1998 to facilitate the redevelopment of the vacated Ford Motor Plant. The Great Mall Project Area was amended in 2001 to add two non-contiguous parcels that would allow the continued use of freestanding highway signs for the Great Mall Shopping Center. The Great Mall Redevelopment Project Area expires in 2010, as it was extended by two years as part of the SB 1096 extensions.

The Caltrans permit for the existing freeway sign at I-880 north of Montague Expressway is set to expire with the end of the sign lease, or November 2008, as the permit was approved for 10 years. Ten years is the maximum amount of time for which Caltrans initially approves freeway signs; extensions may be obtained at the discretion of Caltrans.

Extending the life of the Great Mall Project Area will allow for a new sign to be installed, continuing the opportunity for redevelopment project area businesses to advertise along the freeway, regardless of their location. If approved by the Agency, staff will proceed with actions to prepare and process a plan amendment that will allow extension of the Great Mall Redevelopment Project Area to 2034, which is the expiration date of the most recently added territory to Project Area No. 1.

Tax increment is not collected from the Great Mall Project Area and the proposed plan amendment would not change this status.

If the Agency authorizes staff to proceed with the proposed plan amendment, the CEQA process will begin with notification to all responsible agencies and agencies with jurisdiction by law, as described in the CEQA guidelines.

Agency staff and Agency Counsel also request the approval of an outside legal services contract with the law firm of Murphy & Davis, LLP for an amount not to exceed \$42,075. Such amount would be appropriated from the Redevelopment Fund Balance to the Agency Counsel budget for accounting purposes.

**Fiscal Impact:** Sufficient funds from the Redevelopment Fund Balance will cover the costs for the outside legal services contract.

**Recommendations:**

1. Authorize staff to proceed with the preparation of legal documents, prepare reports and perform other actions necessary for a possible Fifth Amendment of the Redevelopment Plan for the Great Mall Project Area.
2. Adopt a resolution authorizing the engagement of outside legal counsel, Murphy and Davis, for special Agency project legal services.
3. Appropriate \$42,075 from the Redevelopment Fund Balance to the Agency Counsel's FY 2007-08 operating budget.

**\*RA8. Approve Certificate of Completion for Certain Residential Units within Tract No. 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 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 Certificate of Completion, and therefore certificate of completion may be granted to only those housing units.

**Fiscal Impact:** None.

**Recommendation:** Authorize the Agency Executive Director to execute this Certificate of Completion, pertaining to certain residential units (described on the Certificate of Completion document), for KB Home Terra Serena Project No. 3160, subject to approval of agency Council as to form.

**\*RA9. Approve Amendment No. 1 to the Agreement for Professional Financial Consulting Services with Economic & Planning Systems (Staff Contact: James Lindsay, 586-3273)**

**Background:** In November 2007, the City/Agency entered into a contract with Economic & Planning Systems to identify funding mechanisms needed to appropriately and fairly distribute development costs among property owners and developers within the Transit Area. Through the course of that work, it became evident that the fiscal impact analysis completed by ERA in 2006 needed to be updated and the estimated additional revenue to the Milpitas Unified School District needed to be calculated. This additional work comes to a total cost of \$24,550. The current contract is for an amount not to exceed \$98,520.

**Fiscal Impact:** The Redevelopment Agency is advancing funds for this work. A specific plan reimbursement fee has been included in the draft Financing Plan which will allow the Redevelopment Agency to recover the majority of the costs associated with preparation of the Transit Area Specific Plan and Financing Plan.

**Recommendation:** Approve Amendment No. 1 to the Agreement for Professional Financial Consulting Services with Economic & Planning Systems, increasing the contract amount to \$123,070. Appropriate \$24,550 from Redevelopment Agency funds to the Planning Division's FY07-08 operating budget.

**\*RA10. Approve Plans and Specifications, Authorize the Advertisement for Bid Proposals, and Authorize Executive Director to Execute Construction Contract for Corporation Yard Canopy, Project No. 8183 (Staff Contact: Jeff Leung, 586-3326)**

**Background:** Plans and specifications for the corporation yard canopy project have been completed in accordance with the approved five-year Capital Improvement Program (CIP). The project provides for installation of a metal canopy to cover the vehicle fueling station, chemical fill area and vehicle wash area at the Public Works Corporation Yard. In addition, improvements will be made to the fueling station to comply with the enhanced vapor recovery requirement and a security system for the fuel operation.

The Engineer's Estimate for the work is approximately \$370,000. A copy of the project plan title sheet is included in the Council's agenda packets. Complete plans and specifications are available for review in the office of the City Engineer.

Due to the tight schedule and no scheduled Council meetings in July, it is also recommended that the Agency authorize its Executive Director (City Manager) to execute the construction contract after the bid opening, provided the lowest responsive bid amount is within the project budget.

**Fiscal Impact:** None.

**Recommendations:**

1. Approve plans and specifications for the Corporation Yard Canopy.
2. Authorize advertising project for bid proposals for Project No. 8183.
3. Authorize the Executive Director to execute a construction contract, subject to approval as to form by the Agency Counsel.

**\*RA11. Award Construction Contract to Valley Slurry Seal Co. for the Slurry Seal Project FY 2008-09, Projects No. 8194 and No. 6073 (Staff Contact: Jeff Leung, 586-3326)**

**Background:** On May 20, 2008, the City Council approved the project plans and specifications and authorized the advertisement for construction bid proposals for slurry seal in 2008. The project consists of placing slurry seal on these streets to preserve the pavement surface on: Midwick Drive, Sudbury Drive, Sudbury Court, Belbrook Place, Belbrook Way, Kovanda Way,

Berrendo Drive, Fontainebleu Avenue between Midwick Drive and Rose Drive, Fontainebleu Court, Vienna Drive, Beaumere Way, Knollview Drive, Escuela Place, Martil Way between Escuela Parkway and Corinthia Drive, Tirol Court, Clauser Drive between Escuela Parkway and Corinthia Drive, Corinthia Drive between Escuela Parkway and Clauser Drive, Ashland Drive, Freeland Drive, Roswell Drive between Yosemite Drive and Canton Drive, Roswell Court, Monmouth Drive, Carnegie Drive between Yosemite Drive and Edsel Drive, Boulder Street, Cortez Street, California Circle between I-880 On/Off Ramp and Milmont Drive, and Milmont Drive between California Circle and Dixon Landing Road.

The Engineer's Estimate was \$340,000. The project was advertised and sealed bid proposals were opened on June 6, 2008. Bid proposals received ranged from \$526,256 to \$888,889, and the lowest responsible bidder is Valley Slurry Seal Co. The reason for the higher construction costs is due to the recent increase in oil price. Staff also recommends to include Add Alternates A and B.

**Fiscal Impact:** None. Funds for Project No. 8194 are available in FY 2008-09 Capital Improvement Program, when the contract execution and construction will take place.

**Recommendations:** Award Construction Contract and add Alternates A and B to Valley Slurry Seal Co., for Slurry Seal Project FY 2008-09, Projects No. 8194 and No. 6073, in the amount of \$526,256.

**\*RA12. Award Construction Contract to Granite Construction Co. for the Singley Area Street Rehabilitation Phase V, Project No. 8193 (Staff Contact: Jeff Leung, 586-3326)**

**Background:** On May 20, 2008, the City Council approved the project plans and specifications and authorized the advertisement for construction bid proposals. The project provides roadway drainage improvements and asphalt overlay for selected streets (to minimize water ponding in the area):

1. Hamilton Avenue from Merz Court to Enriquez Court
2. Hamilton Avenue from Tramway Drive to Escuela Parkway
3. Tramway Drive from Milpitas Boulevard to Donahe Drive
4. Tramway Drive from Escuela Parkway to Wyoma Place
5. Chad Drive from Singley Drive to Aaron Park Drive
6. Whittier Street

The Engineer's Estimate was \$800,000. The project was advertised and sealed bid proposals were opened on June 6, 2008. Bid proposals were received and ranged from \$772,245 to \$1,042,886, and the lowest responsible bidder is Granite Construction Co.

**Fiscal Impact:** None. Funds are available in FY 2008/09 Capital Improvement Program, when the contract execution award and construction will take place.

**Recommendation:** Award a construction contract to Granite Construction Co., for the Singley Area Street Rehabilitation Phase V, Project No. 8193, in the amount of \$772,245.

**\*RA13. Authorize the Executive Director to Execute Amendment No. 4 to the Agreement with Consolidated Engineering Laboratories (CEL) for Various Projects (Staff Contact: Shelton Sawyer, 586-3407)**

**Background:** CEL and the City entered into an agreement on April 18, 2006 for CEL to provide on-call special inspection and testing services for Midtown and other projects as needed. The contract will expire on June 30, 2008. Staff now requests approval to extend the term of the contract for an additional year, as there is a need to continue to provide inspection and testing services on several new and ongoing construction projects. This is a no-cost amendment and is

only an extension of time. It is anticipated the continued inspection services will be needed for the Library Project, No. 8162, Phase I and Phase II Streetscape Projects, No. 8165, 2008 Street Resurfacing, Project No. 4242, Singley Phase V Reconstruction Project, No. 8193, and Corporation Yard Canopy Improvement, Project No. 8183.

**Fiscal Impact:** None. Funds are available per the original agreement.

**Recommendation:** Authorize the Agency Executive Director to execute Amendment No. 4 to the agreement with Consolidated Engineering Labs for one additional year until June 30, 2009 for inspection and testing services.

**\*RA14. Adopt Resolutions Approving the Annual Investment Policy (Staff Contact: Emma Karlen, 586-3145)**

**Background:** Investment laws require all local agencies to develop an annual investment policy that must be considered by the legislative body of the local agency at a public meeting. The Annual Investment Policy (the Policy) for the City of Milpitas is submitted for Agency review and approval. Finance staff continues to monitor changes to the California Government Code in regards to investment parameters and allowable investments that may impact the City's investment policy. There are no proposed changes to the Annual Investment Policy this year.

The Policy is in compliance with the provisions of the California Government Code, Sections 53600 through 53609, which provides the authority for governing investments for municipal governments.

**Fiscal Impact:** Not applicable.

**Recommendation:** Adopt two resolutions approving the Annual Investment Policy for FY 2008-09.

**RA15. Agency Adjournment**

**XVII. REPORT OF OFFICER AND COMMISSION**

**City Council**

**\* 7. Consider Mayor's Recommendations for Re-appointments to Milpitas Commissions (Contact: Mayor Esteves, 586-3029)**

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

**Emergency Preparedness Commission:**

Re-appoint Brian Shreve (School District rep) to a term that expires in June 2011.  
Re-appoint Russ Cherry to a term that expires in June 2011.

**Library Advisory Commission:**

Re-appoint Marilyn Hay to a term that expires in June 2010.  
Re-appoint Trinidad Aoalin to a term that expires in June 2010.  
Re-appoint Elpidio Estioko to a term that expires in June 2010

**Parks, Recreation and Cultural Resources Commission:**

Re-appoint Kathryn Gray to a term that expires in June 2011.  
Re-appoint Freddie Cacao as Alternate No. 1 to a term that expires in June 2010.

**Fiscal Impact:** None

**Recommendation:** Consider Mayor's recommendations for seven re-appointments to Commissions and vote on re-appointments to three City Commissions.

### Economic Development Commission

- \* **8. Authorize Letter in Support of Federal Legislation HR 6049 Renewable Energy and Job Creation Act of 2008 (Staff Contact: Diana Whitecar, 586-3059)**

**Background:** The Economic Development Commission met on Monday, June 9 and voted unanimously to request that the City Council authorize the Mayor to send a letter to both U.S. Senators in support of the Renewable Energy and Job Creation Act. This act will extend residential solar investment tax credits and remove the current cap of \$2,000. The US House of Representatives passed this bill overwhelmingly in late May 2008. It was placed into Senate consideration on June 6, 2008. A draft letter is included in the Council's agenda packet.

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

**Recommendation:** Authorize the Mayor to send a letter of support for the Renewable Energy and Job Creation Act, HR 6049.

### **XVIII. NEW BUSINESS**

- \* **9. Approve One Youth Sports Assistance Fund Grant Request (Staff Contact: Aaron Bueno, 586-3226)**

**Background:** On June 19, 2007, the Milpitas City Council approved and appropriated \$8,000 for the Youth Sports Assistance Fund for the 2007-08 budget year. Included in the City Council packet for review and consideration is one Youth Sports Assistance Fund application received from the Milpitas Knights Youth Football in the amount of \$1,000, for safety recertification of football helmets. PRCRC was scheduled to review the application at its June 14 meeting.

**Fiscal Impact:** There is currently a balance of \$2,500 in the 2007-08 Youth Sports Assistance Fund. Approval of one Youth Sports Assistance Fund Grant in the amount of \$1,000 will leave a balance of \$1,500 for the remainder of the fiscal year.

**Recommendation:** The Parks, Recreation and Cultural Resources Commission (PRCRC) was anticipated to recommend to the City Council funding one Group Youth Sports Assistance Fund grant, in the amount of \$1,000 to Milpitas Knights Youth Football.

### **XIX. ORDINANCE**

- \* **10. Waive the Second Reading and Adopt Ordinance No. 38.777 Amending the Zoning Ordinance and the City's Sectional Zoning Map (Staff Contact: James Lindsay, 586-3273)**

**Background:** On June 3, 2008, the City Council introduced Ordinance No. 38.777, amending the zoning ordinance and the City's sectional zoning map to implement the Transit Area Specific Plan. Ordinance No. 38.777 is now ready for the second reading and adoption.

**Fiscal Impact:** None

**Recommendations:**

1. Waive the second reading of Ordinance No. 38.777.
2. Adopt Ordinance No. 38.777 for Zoning Amendment ZA08-0002, Transit Area Project.

### **XX. BIDS AND CONTRACTS**

- \* **11. Approve the Fourth Amendment to the Senior Nutrition Contract with Compass Group USA, Inc. (Bateman Division) and Authorize Payment (Staff Contact: Jennifer Tagalog, 586-2786)**

**Background:** The City of Milpitas has contracted with the County of Santa Clara in implementing the Senior Nutrition Program since March 1978. Compass Group USA, Inc. known as Bateman has been catering the Senior Nutrition Program since July 1, 1998. The program serves seniors, age 60 years and older, and Bateman meals will be served 250 days per year, an average of 88 meals per day, for a total of 15,760 meals per year.

Enclosed in the Council's packet is the fourth amendment to the contract, between Bateman and the City of Milpitas, which details the specifications of the contract terms for July 1, 1008 through June 30, 2009, for the Senior Nutrition Program food costs totaling \$63,985.60.

**Fiscal Impact:** Bateman agrees to provide meals at \$4.06 each, which will not exceed the approved budgeted amount of \$63,985.60, for FY 2008-2009. Sufficient funds have been budgeted in the Parks and Recreation Services Department FY 2008-09 operating budget and approved by the City Council on June 3, 2008.

The County conducts the competitive solicitation for the meal services and this will be the last amendment to the current solicitation.

**Recommendation:** Approve the fourth amendment, subject to approval as to form by the City Attorney, to the contract and authorize payment to Bateman, Compass Group USA, Inc. for July 1, 2008 through June 30, 2009, not to exceed \$4.06 per meal for a total of \$63,985.60 for the fiscal year, and subject to approval as to form by the City Attorney.

\* 12. **Approve the Senior Nutrition Contract with the County of Santa Clara (Social Services) (Staff Contact: Jennifer Tagalog, 586-2786)**

**Background:** The City of Milpitas has contracted with the County of Santa Clara in implementing the Senior Nutrition Program since March 1978. The Program serves seniors, sixty years and older and serves an average of 88 meals per day, 250 days per year, for a total of 22,000 meals per year.

Enclosed in the Council's agenda packet is a copy of the Second Amendment Contract between the County of Santa Clara (Social Services) and the City of Milpitas, and is subject to approval as to form by the City Attorney. The total budget for the FY 2008-09 Nutrition Program, shared by the City of Milpitas and County of Santa Clara, is \$164,741. The term of the contract with the County is for the period of July 1, 2008 - June 30, 2009.

**Fiscal Impact:** As outlined in the County's contract, the City's contribution to the program is 50% of the budget or \$82,371, which is included in Parks and Recreation Services' Department operating budget, approved by the City Council on June 3, 2008.

**Recommendations:**

1. Approve the Second Amendment Contract between the County of Santa Clara (Social Services) and the City of Milpitas effective July 1, 2008, through June 30, 2009.
2. Authorize payment to the County of Santa Clara for the amount of the contract \$82,371.

\* 13. **Approve the Fourth Amendment to the Contract with New Orient Restaurant and Authorize Payment (Staff Contact: Jennifer Tagalog, 586-2786)**

**Background:** The City of Milpitas has contracted with New Orient to provide Asian meals twice a week at the Senior Nutrition Program offered at the Milpitas Senior Center since July 1, 2004. Enclosed in the Council's packet is the Fourth Amendment to the Contract, between the City of Milpitas and New Orient, a County of Santa Clara Nutrition Program approved restaurant. All funds have been budgeted in the County of Santa Clara's Senior Nutrition program budget and the Parks and Recreation Services Department FY 2008-09 operating budget. The total budget for the 6,240 meals is \$25,958.40, which does not include the price of milk and the amendment to the

contract stipulates invoicing will not exceed \$4.16 per meal. The current caterer, Bateman, will serve the remaining 15,760 meals.

The City of Milpitas has contracted with the County of Santa Clara in implementing the Senior Nutrition Program since March 1978. The Program serves seniors, age 60 years and older, 250 days per year, an average of 88 meals per day, for a total of 22,000 meals per year for both the Asian meals and the meals catered by Bateman. This contract is subject to approval as to form by the City Attorney.

The County conducts the competitive solicitation for the meal services and this will be the last amendment to the current solicitation.

**Fiscal Impact:** Sufficient funds have been budgeted and approved in the Parks and Recreation Services operating budget for FY 2008-09.

**Recommendations:**

1. Approve the fourth amendment to the contract between the City of Milpitas and the New Orient Restaurant from July 1, 2008 through June 30, 2009, for the Senior Nutrition Program.
2. Authorize payment to New Orient Restaurant for the total amount of this contract, \$25,958.40, not to exceed \$4.16 per meal.

- \* 14. **Approve Agreement Renewal with California State Association of Counties-Excess Insurance Authority (CSAC-EIA) for the Employee Assistance Program Services Purchased through Managed Health Network (MHN) for City of Milpitas Employees (Staff Contact: Carmen Valdez, 586-3086)**

**Background:** Managed Health Network, Inc. (MHN) provides employee assistance services for the City's employees. Staff recommends renewal of the CSAC-EIA Agreement through MHN contract for FY 2008-09, which includes a 3.5% increase.

**Fiscal Impact:** There are sufficient funds allocated in the Human Resources Department FY 2008-09 budget.

**Recommendation:** Authorize staff to enter into an agreement for continuing the Employee Assistance Program for City of Milpitas employees with CSAC-EIA for the period July 1, 2008 through June 30, 2009, not to exceed \$35,954.28.

- \* 15. **Amend Master Services Agreement with Southern California Risk Management Association (SCRMA) to Extend the Current Agreement through June 30, 2009 (Staff Contact: Carmen Valdez, 586-3086)**

**Background:** The City entered into an Agreement on November 1, 2005 with Southern California Risk Management Association (SCRMA) to provide services and perform work as the City's Workers' Compensation Third Party Administrator in accordance with any applicable requirements of federal, state or local laws or rules and/or regulations. The term of the original agreement will expire on June 30, 2008.

At this time, 63 is the number of open indemnity claims. Since the monthly charge is based upon the number of Indemnity Claims, the City will have a 3% increase from last year to bring the annual fee up to \$128,284.

**Fiscal Impact:** There are sufficient funds allocated in the Human Resources Department FY 2008-09 budget.

**Recommendation:** Authorize the City Manager to execute an amendment to the current contract with Southern California Risk Management Association (SCRMA), to extend the agreement

through June 30, 2009, and to approve payments in an amount not to exceed \$128,284 for the administration of the workers' compensation program for the City of Milpitas.

\* **16. Approve Contract Renewal for Excess Workers' Compensation Insurance (Staff Contact: Carmen Valdez, 586-3086)**

**Background:** The City carries excess workers' compensation insurance in accordance with state law. Our insurance broker, Brown & Brown of California was able to obtain coverage through Safety National Casualty Corporation for Fiscal Year 2008-09. Last year, FY 2007-08, the cost of the excess workers' compensation was \$163,112. This year, staff was quoted an overall rate decrease of 24.9%. The City's self-insured retention is \$1,000,000 for safety employees and \$750,000 for miscellaneous employees. The renewal premium is for Fiscal Year 2008-09 is \$128,887 and is based on the City's payroll.

**Fiscal Impact:** There are sufficient funds allocated in the Human Resources Department FY 2008-09 budget.

**Recommendation:** Approve acceptance of National Safety Casualty Corporation for the City's excess workers' compensation insurance for FY 2008-09, authorizing the City Manager to pay Brown & Brown of California the premium rate of \$128,887.

\* **17. Approve and Authorize City Manager to Execute Agreement Amendment No. 1 with Randall Funding and Development, Inc., for On-Call Services for Various Capital Improvement Projects (Staff Contact: Greg Armendariz, 586-3317)**

**Background:** On April 17, 2007, the City Council approved a consultant agreement with Randall Funding and Development, Inc. in the amount of \$25,000 to perform on-call grant development services. Staff recommends that Randall Funding and Development, Inc. perform additional grant development services. Staff negotiated a scope and fee for these services not to exceed \$34,000, which is considered reasonable for the work.

**Fiscal Impact:** None. There are sufficient funds in the project budgets for these consultant services.

**Recommendation:** Approve and Authorize the City Manager to execute Amendment No. 1 to the agreement with Randall Funding and Development, Inc., in the amount of \$34,000, for on-call services for various projects, subject to approval as to form by the City Attorney.

\* **18. Approve Plans and Specifications and Authorize the Advertisement for Bid Proposals for Water System Air Relief Valve Modifications, Project No. 7086 - Phase II (Staff Contact: Jeff Leung, 586-3326)**

**Background:** Plans and specifications for this project have been completed in accordance with the approved five-year Capital Improvement Program. The project provides for retrofitting of approximately fifty-eight (58) air relief water system valves from below ground level to above ground level, including valve enclosures to comply with California Department of Public Health requirements (State Code, Title 22, Chapter 16).

The Engineer's Estimate for the work is approximately \$170,000. A copy of the project plan title sheet is included in the Council's agenda packets. Complete plans and specifications are available for review in the office of the City Engineer.

**Fiscal Impact:** None. Funds are scheduled to be available in FY 2008-09, Capital Improvement Program, when award and construction of the project will take place.

**Recommendations:**

1. Approve plans and specifications for Water System Air Relief Valve Modifications, Project No. 7086–Phase II.
2. Authorize advertising the project for bid proposals.

\* **19. Approve Plans and Specifications, Authorize the Advertisement for Bid Proposals for Venus Pump Station Rehabilitation, Project No. 6101 (Staff Contact: Jeff Leung, 586-3326)**

**Background:** Plans and specifications for the Project No. 6101 have been completed in accordance with the approved five-year Capital Improvement Program. The project provides for the rehabilitation of the sewer pump station including the sealing of the wet well, removing and replacing the pumps, hatches, valves and related electrical controls.

The Engineer's Estimate for the work is approximately \$320,000. A copy of the project plan title sheet is included in the Council's agenda packets. Complete plans and specifications are available for review in the office of the City Engineer.

**Fiscal Impact:** None.

**Recommendations:** Approve plans and specifications and authorize advertising the project for bid proposals for Venus Pump Station Rehabilitation, Project No. 6101.

\* **20. Authorize the City Engineer to Execute a Contract Change Order with DeSilva Gates for Street Resurfacing 2008, Projects No. 4242, No. 6073 and No. 8194 (Staff Contact: Jeff Leung, 586-3326)**

**Background:** At its April 1, 2008 meeting, the Council awarded the 2008 Street Resurfacing project to DeSilva Gates Construction. Anticipated completion date is September 2008. The list of streets has been posted on the City's Web page.

Staff recommends that additional work be included in the project base repair work for the upcoming Slurry Seal Project, Projects No. 8194 and No. 6073, and pavement reconstruction of Freeland Avenue. Staff determined that it is cost effective to include this needed work with the current resurfacing project since the base repair costs are very favorable and most likely would be higher at a later date. In addition to the reduced cost, the slurry seal project would be completed earlier, allowing the work near the schools to be completed prior to the start of the school year. Staff negotiated a change order with the Contractor not to exceed \$301,000. It is estimated to save the City \$120,000.

**Fiscal Impact:** None. Funds are available equally from Projects No. 4242, No. 6073 and No. 8194.

**Recommendations:** Authorize the City Engineer to execute the Contract Change Order with DeSilva Gates Construction, Street Resurfacing 2008, in the amount of \$301,000.

\* **21. Approve Amendment No. 2 to the Agreement for Professional Planning Services with Metropolitan Planning Group (Staff Contact: Sheldon Ah Sing, 586-3278)**

**Background:** In April 2007, the City entered into a contract with Metropolitan Planning Group for contract planning services after successfully completing the City's process for selecting professional consultants. The original terms of the contract were for an amount not to exceed \$165,000 through January 17, 2008. On January 15, 2008, the City Council approved Amendment No. 1 extending the term of the contract to June 30, 2008 and added \$50,000 to the total contract amount. The Planning Division budgeted \$270,000 for day-to-day as needed contract Planning staff for Fiscal Year 2008-09. Amendment No. 2 is recommended to extend the term to June 30, 2009 and add \$270,000 to the total contract amount.

**Fiscal Impact:** No fiscal impact is anticipated because costs will not exceed the allocated budget for contractual services and because most of the services performed can be reimbursed from the Private Job accounts of the development projects being processed.

**Recommendation:** Approve Amendment No. 2 to the Agreement for Professional Planning Services with Metropolitan Planning Group extending the term to June 30, 2009, increasing the term by one year and increasing the contract amount by \$270,000.

- \* 22. **Approve Amendment to the Contract for Attorney Services with Hopkins Carley (Staff Contact: Michael Ogaz, 586-3040)**

**Background:** The law firm of Hopkins Carley is assisting the City on a number of personnel related matters. To date, its contract is for a not to exceed amount of \$19,000. Anticipated expenditures for general legal services, including litigation, for the foreseeable future are approximately \$60,000. As such, staff recommends that the agreement be amended to add that amount for a total contract amount of \$79,000.

**Fiscal Impact:** Sufficient funds are already appropriated within this year's City Attorney Department budget to cover the additional \$60,000 being added to the contract.

**Recommendation:** Approve an amendment to the contract with Hopkins Carley, adding \$60,000 to the existing contract of \$19,000, for a total contract amount of \$79,000.

- \* 23. **Approve Amendment No. 3 to the Contract for Attorney Services with Roy C. Abrams, Esq. (Staff Contact: Michael Ogaz, 586-3040)**

**Background:** During the ramp-up period for the in-house City Attorney's Office, attorney Abrams has provided valuable interim support and assistance while permanent staff was being hired. His current contract in the amount of \$69,000 expires on June 30, 2008. Staff recommends extending the contract through the end of calendar year 2008 and adding \$25,000 to the contract amount. While his services will be more limited with the arrival of the permanent Assistant City Attorney and Legal Assistant, Mr. Abrams will continue to serve as advisor to the Open Government Subcommittee and on special assignments.

**Fiscal Impact:** There are sufficient amounts appropriated in this year's City Attorney Department budget to fund this contract amendment.

**Recommendation:** Approve the Third Amendment to the Agreement between the City of Milpitas and Roy Abrams, Esq., adding \$25,000 to the contract amount and extending the term of the Agreement through December 31, 2008.

- \* 24. **Authorize the City Engineer to Execute a Contract Change Order No. 8, Main Sewage Pump Station, Project No. 6103 (Staff Contact: Greg Armendariz, 586-3317)**

**Background:** The City Council awarded a project to construct the Main Sewage Pump Station Improvements, to Anderson Pacific Engineering Construction, Inc. on December 5, 2006, and construction is underway. This project provides for a complete refurbishment of the existing Main Sewage Pump Station, including the construction of a new underground wet well with submersible pumps and inline grinders, a new control building with electrical room, site improvements including drainage, parking areas, perimeter fencing and lighting. This project is currently on schedule and on budget with a planned completion date of October 2008. As construction progresses, additional unforeseen work and modifications have been identified.

Staff prepared a contract change order for nine items of work, detailed in the staff report included in the Council's packets. This added work would not require a time extension. The cost of this change order is \$54,242 and is considered reasonable for the work and materials involved. The

project is approximately 75% complete and the change order contingency used including this change order is 62%.

**Fiscal Impact:** None. There are sufficient funds in the project budget.

**Recommendation:** Authorize the City Engineer to execute Change Order No. 8 to the contract with Anderson Pacific Engineering Construction in the amount of \$54,242 for the Main Sewage Pump Station, Project No. 6103.

\* 25. **Award the Bid to First Alarm and Authorize the City Manager to Execute a Contract for Park Security Services (Staff Contact: Chris Schroeder, 586-3161)**

**Background:** Purchasing and Parks and Recreation Services developed the specification for park security services and sent out bids on May 12, 2008. The bid was for a one year term with three additional one-year options based on prior performance and incremental pricing at the City's discretion. Staff sent bid requests to four security contractors on Purchasing's bidders list. In addition, the bid was advertised in the local newspaper, on the City website, and in the Blue Book. Four bids were received and are summarized below.

<u>Bidder</u>	<u>Total Bid</u>
Acufacts Security	\$28,166.40
American Discount Security	\$49,997.00
Coleman Security*	\$26,611.20
First Alarm	\$27,900.00

\*Rejected: References not of the nature and scope of work contemplated in the contract.

**Fiscal Impact:** \$ 27,900. Funds are available for this service from the Parks and Recreation Services Operating budget.

**Recommendation:** Award the bid to First Alarm and authorize the City Manager to execute a contract for Park Security Services with First Alarm for the annual amount of \$27,900, subject to approval as to form by the City Attorney.

\* 26. **Approve Agreement with Municipal Revenue Advisors for Transient Occupancy Tax Recovery Services (Staff Contact: Emma Karlen, 586-3145)**

**Background:** A class action lawsuit known as "Los Angeles. v Hotels.com, Inc. et al," was filed in Los Angeles Superior Court on December 30, 2004 regarding the non-payment or underpayment of Transient Occupancy Tax ("TOT"). The suit was filed on behalf of all cities in California that have a TOT and in which the Online Travel Companies ("OTCs") are selling rooms. The City may be eligible to be part of the Class Action lawsuit. On July 27, 2007, Judge Carolyn Kuhl issued a ruling staying the pending civil action and ruling that the public entities needed to exhaust their administrative remedies before proceeding with their civil claims. Therefore, the City needs to exhaust its administrative remedies under its Municipal Code in order to proceed under the class action or individually.

After exhausting the administrative remedies, a determination by the Court will be made as to whether the public entities will be able to move forward as a class. If the City is entitled to move forward as a member of the class, the statute of limitations is tolled from the date the City of Los Angeles filed the case (i.e. December 30, 2004). Therefore, the City may be eligible to collect unpaid or underpaid TOT as far back as January 1, 2001 plus penalties and interest.

Municipal Revenue Advisors (MRA) is a consultant that is engaged by the City of Milpitas for sales tax and use tax consulting services. MRA proposes to work with the City to recover the unpaid or underpaid TOT on a contingency fee basis. Primarily, MRA will prepare the necessary billing/assessments on behalf of the City to demand appropriate payment for the non-payment or

underpayment to the City of its TOT by OTCs. MRA will also represent the City in conjunction with City staff in presenting findings to the hearing review board (officer) in order to exhaust the City's administrative remedies, including administrative proceedings under the City's TOT Ordinance.

**Fiscal Impact:** Potential recovery of Transient Occupancy Tax revenue.

**Recommendation:** Approve the agreement with Municipal Revenue Advisors for Transient Occupancy Tax recovery services.

- \* 27. **Award the Bid to Citation Press and Authorize the City Manager to Execute a Contract for Publishing the Recreation Services Activity Guide (Staff Contact: Chris Schroeder, 586-3161)**

**Background:** Purchasing and Recreation Services developed the specification for the annual Recreation Services Activity Guide and went out to bid on April 7, 2008. Staff sent bid requests to ten printing vendors on Purchasing's bidders list for the setup, printing and preparation for residential mail delivery of 73,000 copies of the Milpitas Activity Guide. The activity guide informs residents of classes and activities offered at Recreation facilities. The bid was for a one-year term, with three additional one-year options based on prior performance and incremental pricing at the City's discretion. In addition, the bid was advertised in the local newspaper, on the City website, and in the Blue Book. Six (6) bids were received and are summarized below.

<u>Bidder</u>	<u>Cost per Guide</u>	<u>Total Bid</u>
Fricke-Parks	\$0.313	\$22,870.29
Wesco Graphics	\$0.314	\$22,968.60
Folger Graphics	\$0.37	\$27,055.63
Citation Press	\$0.276	\$21,550.30
Delta Web Printing	\$0.44	\$35,584.46
Milpitas Post	\$0.323	\$23,609.40

**Fiscal Impact:** \$21,550.30. Funds are available for Guide publication from Recreation Services Operating current budget.

**Recommendation:** Award the bid and authorize the City Manager to execute a contract for publishing the Recreation Services Activity Guide to Citation Press for the annual amount of \$21,550.30, subject to approval as to form by the City Attorney.

- \* 28. **Approve Amendment No. 2 to the McCarthy Ranch Landscape Maintenance Service Contract with Jensen Landscape Services, Inc. (Staff Contact: Chris Schroeder, 586-3161)**

**Background:** On August 29, 2007, the City entered into a three-year contract with Jensen Landscape Services, Inc. for the maintenance of the McCarthy Ranch landscape district. The district was formed in 1995 and has not been improved over those thirteen years. Over the course of time, various plantings and grasses have deteriorated and need to be replaced in the area near the intersection of Ranch Dr. and N. McCarthy Blvd. This Amendment No. 2 will facilitate the removal and replacement of various grasses and shrubs that died and need to be replaced.

**Fiscal Impact:** \$16,580.08. Funds are available for this purchase from the Public Works operating budget.

**Recommendation:** Approve Amendment No. 2 to the McCarthy Ranch landscape maintenance service contract with Jensen Landscape Services, Inc. for the not-to-exceed amount of \$16,580.08.

## XXI. CLAIM AND DEMAND

- \* 29. **Authorize Budget Transfer from Sponsorship Child Care to Preschool Office budget (Staff Contact: Toby Librande, 586-3077)**

**Background:** The California Department of Education/Child Development Division and the International Child Resource Institute awarded the City of Milpitas a \$5,000 one time grant to be used to strengthen the Milpitas Alliance for Better Child Care, our local family child care support group. Staff is requesting a transfer of the \$5,000 from the Sponsorship Child Care Holding Account HA1377-2500 to the Preschool Budget Account 100-163-4221 to cover the expenses incurred from the grant proposal activities. The grant activities included: graphic design, layout, translation and printing for a brochure, workshop fees for the presenter, and language ambassador stipends.

**Fiscal Impact:** None as the grant funds were already awarded, and expenses incurred.

**Recommendation:** Authorize the Budget Transfer of \$5,000 from Holding Account 1377-2500\_Sponsorship Child Care to 100-163-4221 Preschool Office budget.

**XXII. ADJOURNMENT**

**NEXT REGULAR MEETING  
TUESDAY, AUGUST 5, 2008**

***NO CITY COUNCIL MEETINGS SCHEDULED IN JULY***