



**MILPITAS CITY COUNCIL MEETING AGENDA
OCTOBER 21, 2008**

**6:45 P.M. (CLOSED SESSION) • 7:00 P.M. (PUBLIC BUSINESS)
455 E. CALAVERAS BOULEVARD**

SUMMARY OF CONTENTS

- I. CALL TO ORDER/ROLL CALL (6:45 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 Polanski)**
- VI. APPROVAL OF COUNCIL MEETING MINUTES – October 7, 2008**
- VII. SCHEDULE OF MEETINGS – Council Calendars for October and November 2008**
- VIII. 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.

- IX. ANNOUNCEMENTS**
- X. ANNOUNCEMENT OF CONFLICT OF INTEREST**
- XI. APPROVAL OF AGENDA**
- XII. CONSENT CALENDAR (Items with asterisk*)**
- XIII. PUBLIC HEARING**
 - 1. Approve Master Development Map for Milpitas Station Residential Project TM08-0001 (Staff Contact: Sheldon Ah Sing, 586-3278)**
- XIV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING**
 - RA1. Call to Order by the Mayor/Chair**
 - RA2. Roll Call**

- RA3. Approval of Minutes** (September 16, 2008)
- RA4. Approval of Agenda and Consent Calendar** (Items with asterisk*)
- RA5. Receive Report on the Event Programming for the New Library Grand Opening and Approve Lease Agreement Between the City of Milpitas Redevelopment Agency and the Santa Clara Library Joint Powers Authority, Project No. 8162** (Staff Contact: Steve Erickson 586-3414)
- *RA6. Authorize the Agency Executive Director to Execute Amendment No. 2 to the Agreement with Critical Solutions Inc. for Construction Support Services for Senior Center Project No. 8176** (Staff Contact: Steve Erickson, 586-3414)
- *RA7. Authorize the Agency Executive Director to Execute Amendment No. 3 to the Agreement with Brian Kangas Foulk for Midtown North Main Street Streetscape Improvement Project, and Midtown Environmental Impact Report Amendment, Projects No. 8165 and No. 8185** (Staff Contact: Steve Erickson, 586-3414)
- *RA8. Adopt a Resolution Approving Redevelopment Agency 20% Low-Income Housing Set-Aside Funds for \$50,000 Down Payment Assistance Loan for the Resale of Property at 39 East Curtis Avenue** (Staff Contact: Felix Reliford, 586-3071)
- RA9. Agency Adjournment**

XV. REPORTS OF OFFICER AND SUBCOMMITTEE

City Council

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

Facilities Naming Subcommittee

- * 3. Approve Recommendation for the Naming of the William Denny Weisgerber Auditorium in the New Milpitas Senior Center and the Naming of Gerald Way and Gerald Circle to Honor World War II Veteran Gerald Ferreira** (Staff Contact: Jaime Rodriguez, 586-3335)

XVI. NEW BUSINESS

- * 4. Approve Water Supply Assessments for the McCarthy Ranch Mixed-Use, Milpitas Square Mixed-Use, and Campus at McCarthy Ranch (Veritas) Projects** (Staff Contact: Kathleen Phalen, 586-3345)
- * 5. Approve Two Youth Sports Assistance Fund Grant Requests** (Staff Contact: Aaron Bueno, 586-3226)
- * 6. Authorize the Police Department to Accept the Wal-Mart Community Grant** (Staff Contact: Steve Pangelinan, 586-2426)
- * 7. Consideration of the City Council Meeting Schedule for 2009** (Staff Contact: Mary Lavelle, 586-3001)

XVII. RESOLUTIONS

- 8. Adopt a Resolution Approving a Minor Site Development Permit No. MS08-0012 for 1485 Country Club Drive** (Staff Contact: Tiffany Kunsman, 586-3283)

- * 9. **Adopt a Resolution to Accept Grant from Federal Emergency Management Agency for the Purchase of Self Contained Breathing Apparatus for the Fire Department (Staff Contact: Geoffrey Maloon, 586-2820)**
- * 10. **Adopt a Resolution Adopting Local Goals and Policies and Declaring Intention to Establish Community Facilities District No. 2008-1 (Public Services) and to Levy a Special Tax therein and to Provide for the Future Annexation of Territory (Staff Contact: Emma Karlen, 586-3145)**
- * 11. **Adopt a Resolution Adopting an Identity Theft Prevention Program (Staff Contact: Emma Karlen, 586-3145)**
- * 12. **Adopt a Resolution Making Findings and Authorizing the Provision of Water Service to a Site Outside of the Urban Growth Boundary and Authorizing the Execution of a Water Supply Agreement with the Milpitas Unified School District and the County of Santa Clara for Air Point School (Staff Contact: Kathleen Phalen, 586-3345)**
- * 13. **Adopt a Resolution Authorizing Reduction of Subdivision Improvement Bonds for Tract 9697 and Tract 9699, Project No. 3160 (Staff Contact: Fernando Bravo, 586-3328)**
- * 14. **Adopt a Resolution Approving the Next Generation Click it or Ticket Program Agreement with the Regents of the University of California Berkeley School of Public Health Traffic Safety Center and the California Office of Traffic Safety (Staff Contact: Henry Kwong, 586-2419)**

XVIII. BIDS AND CONTRACTS

- * 15. **Award Construction Contract to West Valley Construction Company, Inc. for Air Relief Valve Modifications, Project No. 7086 (Staff Contact: Jeff Leung, 586-3326)**
- * 16. **Approve Amendment to the Agreement between the County of Santa Clara and the City of Milpitas Providing for Administration of the Unified Hazardous Waste and Hazardous Materials Management Program (Staff Contact: Patricia Joki, 586-3370)**
- * 17. **Authorize the City Manager to Execute a Cost-Sharing Agreement with Santa Clara Valley Water District to Provide a One-to-One Match for the Water Efficient Landscape Rebate for Residential Customers (Staff Contact: Kathleen Phalen, 586-3345)**
- * 18. **Authorize the City Engineer to Execute Contract Change Order No. 10 with Anderson Pacific for the Main Sewage Pump Station, Project No. 6103 (Staff Contact: Greg Armendariz, 586-3317)**

XXI. ADJOURNMENT

**NEXT REGULAR MEETING
TUESDAY, NOVEMBER 4, 2008**

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

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

BECOME A CITY COMMISSIONER!

Currently, there are openings for the:

Arts Commission (alternate)

Emergency Preparedness Commission

Mobile Home Park Rental Review Board

Parks, Recreation and Cultural Resources Commission

Applications are available online at www.ci.milpitas.ca.gov or at the City Hall Information Desk.

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

If you need assistance, per the Americans with Disabilities Act, for any City of Milpitas public meeting, call the City Clerk at 586-3001 or send an email to mlavelle@ci.milpitas.ca.gov prior to the meeting. You may request a larger font agenda or arrange for mobility assistance. For hearing assistance, headsets are available in the Council Chambers for all meetings. TDD phone number (408) 586-3013.

AGENDA REPORTS

XIV. PUBLIC HEARING

1. Approve Master Development Map for Milpitas Station Residential Project TM08-0001 (Staff Contact: Sheldon Ah Sing, 586-3278)

Background: The Milpitas Station residential project is located within the Piper-Montague sub-district of the Transit Area Specific Plan. The Master Development Map will create four parcels with ancillary lots for private streets; the offer of dedication of right-of-way for public streets and a public park; and provision for utilities for the purpose of accommodating future residential development plans. Ultimately, the parcels could accommodate up to 318 dwelling units. This proposal includes no development or condominium plans.

The required density of the project is met through averaging density throughout the proposed developments within the 30 acre Piper-Montague sub-district, as allowed for in the Specific Plan. Overall, the proposed density for 1,436 units within the sub-district falls within the allowable range of dwelling units permitted for the area.

A Specific Plan policy calls for two smaller parks in the sub-district. The overall development plan for the sub-district proposes the consolidation of the two parks into one 3.20 acre park that would equal the size of the two parks planned for the area. Having a larger park will accommodate more flexibility in recreational programming and was supported by the Parks, Recreation and Cultural Resources Commission on October 6. The Master Development Map for Milpitas Station provides for the dedication of half of the park area. The remaining half will be dedicated concurrently with the Citation Homes project, to be reviewed by the City Council in the coming months. The Planning Commission recommended the City Council approve the project with a recommendation that opportunities for additional parking around the park be explored.

Fiscal Impact: None.

Recommendations:

1. After hearing public testimony, move to close the public hearing.
2. Adopt a Resolution approving the Master Development Map for Milpitas Station.

XIV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Call to Order by the Mayor/Chair

RA2. Roll Call

RA3. Approval of Minutes (October 7, 2008)

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

RA5. Receive Report on the Event Programming for the New Library Grand Opening and Approve Lease Agreement Between the City of Milpitas Redevelopment Agency and the Santa Clara Library Joint Powers Authority, Project No. 8162 (Staff Contact: Steve Erickson 586-3414)

Background: At the October 7, 2008 Council meeting, staff was requested to report details for the planned Library Grand Opening event scheduled for January 10, 2009. Staff will present options with associated costs for this occasion.

In addition, the proposed Library Lease Agreement for the new library is included in the Council agenda packet. This lease agreement mainly conforms to the key deal points previously presented by staff to the Library Subcommittee and the Council on 9/23/08 and 3/20/07

respectively. Under the lease agreement, the Redevelopment Agency shall act as the landlord of the new library facility at 160 Main Street in Milpitas. The lease agreement has a 30-year base term, with the option for the Santa Clara Library Joint Powers Authority (library JPA) to extend the lease for two additional 10-year terms for a total possible rental of 50 years.

The Library JPA shall pay annual rent to the Redevelopment Agency and pay for all water, gas, heat, light and other utility payments. Provisions have been made to allow the Redevelopment Agency and the public to use the new library parking facility for special and civic events, in cooperation with library operations.

Fiscal Impact: None. Funds are available in the project budget.

Recommendations:

1. Receive report on Event Programming for the Library Project Grand Opening Ceremony.
2. Approve the Library Lease Agreement between the Milpitas Redevelopment Agency and the Santa Clara County Joint Powers Authority.

***RA6. Authorize the Agency Executive Director to Execute Amendment No. 2 to the Agreement with Critical Solutions Inc. for Construction Support Services for Senior Center Project No. 8176 (Staff Contact: Steve Erickson, 586-3414)**

Background: On March 7, 2006, the Redevelopment Agency awarded a consultant contact to Critical Solutions Inc. to provide construction management and technical support services, initially for the new Milpitas Public Library, Midtown East Parking Garage, and related North Main Street Development projects for a total not to exceed fee of \$2,200,000. The Request for Proposals (RFP) and the consultant contract allow for work by Critical Solutions Inc. on other projects listed in the RFP, but only upon modification of the consultant agreement's scope of work and City Council approval.

Staff now seeks authorization to modify the scope of work and engage Critical Solutions Inc. on a project listed as a possible work item on the original RFP. Currently staff is reviewing contractor pre-qualification statements for Senior Center Remodeling Project No. 8176. The project will be bidding in November 2008 and construction will start in February/March 2009. It is therefore recommended to amend the contract with Critical Solutions Inc. to provide construction support services for the project similar to what was provided for the library project. It is proposed that CSI, on a part-time basis, would assist the City's project management staff in the review of contractor submittals, contractor requests for information, change orders, and resolution of field issues during construction. Staff negotiated a scope and fee for these services not to exceed \$164,876, which is considered reasonable for the services provided.

Fiscal Impact: None. There are sufficient funds in the project budget for this anticipated expense.

Recommendation: Authorize the Agency Executive Director to execute Amendment No. 2 to the Agreement with Critical Solutions Inc. to add construction support services for the Senior Center Remodeling Project No. 8176, for an amount not to exceed \$164,876, subject to approval as to form by the Agency Counsel.

***RA7. Authorize the Agency Executive Director to Execute Amendment No. 3 to the Agreement with Brian Kangas Foulk for Midtown North Main Street Streetscape Improvement Project, and Midtown Environmental Impact Report Amendment, Projects No. 8165 and No. 8185 (Staff Contact: Steve Erickson, 586-3414)**

Background: On April 5, 2005, the Redevelopment Agency awarded a consultant contact with Brian Kangas Foulk (BKF) Engineers for the design of the North Main Street Streetscape Improvements. On August 5, 2008, Redevelopment Agency approved Amendment No. 2 with BKF to provide construction services for the second phase of the streetscape project.

Staff recommends approval of Amendment No. 3 with BKF Engineers to provide design services and project coordination between the North Main Street streetscape project and a new project for the Carlo Street off-ramp improvements.

Design services include drafting, surveying services, and design review meetings to coordinate the projects. Staff has negotiated a scope and fee for these services, and Amendment No. 3 is recommended for these additional services to be paid from the Midtown EIR Amendment project, Project Number 8185. It is anticipated that a new CIP project will be created for the construction of the Carlo Street off-ramp improvements. The cost for these services is estimated not to exceed \$14,801, and this is considered reasonable for the work involved.

Fiscal Impact: Sufficient funds are available in the project budgets to award this project.

Recommendation: Authorize the Agency Executive Director to execute Amendment No. 3 to the agreement with Brian Kangas Foulk Engineers in the amount of \$14,801, Project No. 8185 subject to approval as to form by the Agency Counsel.

***RA8. Adopt a Resolution Approving Redevelopment Agency 20% Low-Income Housing Set-Aside Funds for \$50,000 Down Payment Assistance Loan for the Resale of Property at 39 East Curtis Avenue (Staff Contact: Felix Reliford, 586-3071)**

Background:

The property owners at 39 East Curtis Avenue have contacted staff with their desire to resell their affordable housing unit. Staff and the Lender have assessed the potential buyers on the waiting lists and have been unable to find any eligible buyers for the moderate-income price unit (\$338,413.56). The Resale Restriction Agreement provides 90 days for the Agency to find a new buyer. If no buyer is found after that 90-day period, the property owner can sell the unit at fair market value and the long-term affordability restrictions would no longer apply.

The current downturn in the housing market has substantially reduced the number of eligible homebuyers based on stricter lending requirements (homebuyers are unable to obtain credit to purchase a home) and reduction in housing prices, which has narrowed the gap between market rate and below market rate moderate-income housing prices.

Staff has located a potential buyer that wishes to purchase the unit, but requires \$50,000 in down payment assistance to qualify for the loan. Staff is recommending that the Redevelopment Agency allocate \$50,000 from the Agency's Low/Moderate Income Housing Fund for a down payment assistance loan that would be paid back at the sale of the unit.

An alternative to the \$50,000 subsidy is for the Agency to purchase the unit at the moderate-income price to provide additional time to find an eligible homebuyer that does not require down payment assistance. Staff believes providing the homebuyer with a \$50,000 loan (that would be paid back) would be more appropriate than purchasing the affordable unit. Sufficient funds are available in the Redevelopment Agency 20% Low-Income Housing Set Aside Fund to support this request.

Redevelopment Law Section 33334.2 authorizes the Redevelopment Agency to set-aside at least 20% of all tax increment revenue generated from the project area for the purpose of increasing, improving, and preserving the community's supply of low and moderate-income housing

Fiscal Impact: There are sufficient funds in the Redevelopment Agency's Low/Moderate Income Housing Fund to provide the \$50,000 loan.

Recommendation: Adopt a resolution approving the \$50,000 down payment assistance loan for the resale of the property at 39 E. Curtis Avenue from the Redevelopment Agency 20% Low-Income Housing Set-Aside Fund.

RA9. Agency Adjournment

XV. REPORTS OF OFFICER AND SUBCOMMITTEE

City Council

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

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

Arts Commission and Public Art Committee:

Appoint Becky Strauss (current Alternate No. 1) as a regular member to a term that expires in October 2011.

Re-appoint Linda Rabe to a term that expires in October 2011.

Public Art Committee only:

Re-appoint Larry Voelger to a term that expires in October 2011.

Re-appoint Julie Cherry to a term that expires in October 2011.

Re-appoint Barbara Jo Navarro to a term that expires in October 2011.

Recycling and Source Reduction Advisory Commission:

Re-appoint Ricardo Ablaza to a term that expires in October 2011.

Re-appoint Ed Blake to a term that expires in October 2011.

Sister Cities Commission:

Re-appoint Dennis Grilli to a term that expires in September 2011.

Youth Advisory Commission:

Appoint Katherine Pita as Alternate No. 4 to a term that expires in September 2009.

Recommendation: Consider Mayor's recommendations for appointments/re-appointments to Milpitas Commissions and vote on appointments.

Facilities Naming Subcommittee

*** 3. Approve Recommendation for the Naming of the William Denny Weisgerber Auditorium in the New Milpitas Senior Center and the Naming of Gerald Way and Gerald Circle to Honor World War II Veteran Gerald Ferreira (Staff Contact: Jaime Rodriguez, 586-3335)**

Background: The Facilities Naming Subcommittee met on September 17, 2008 and requested that the following items be forwarded to the City Council for consideration and approval.

Assignment of the "William Denny Weisgerber Auditorium" in the New Milpitas Senior Center:

A nomination form was received from Mr. Jerry Epps to name the new Milpitas Senior Center after Mr. William "Denny" Weisgerber, former Milpitas City Councilmember and Mayor. Mr. Weisgerber is presently the Chair of the Milpitas Senior Advisory Commission and the County Council on Aging.

The Subcommittee voted to support staff's suggestion to name the new auditorium in the new Milpitas Senior Center. This is the only room available for naming within the new Milpitas Senior Center.

Approval of "Gerald Way" and "Gerald Circle" in the New Sinclair Renaissance Development:

A nomination form was received from Mr. Louis Horyza to name a street after Mr. Gerald Ferreira, a Milpitas veteran who passed away during service in World War II. Mr. Horyza's nomination clarifies that there were two Ferreira families in Milpitas during World War II. The

existing “Ferreira Ct” off Edsel Dr is named in honor of Sebastian Ferreira. The nomination requests that Mr. Gerald Ferreira receive a separation distinction.

The Subcommittee voted to support staff’s suggestion to name two new streets in the new Sinclair Renaissance project located on Sinclair Frontage Road between Los Coches St and Wrigley Way. The two new streets are “Gerald Way” which will bisect Sinclair Frontage Road and “Gerald Circle” which will provides access around the development.

Fiscal Impact: There is no fiscal impact to naming of rooms and areas at the New Senior Center nor are there fiscal impacts with the naming of new streets.

Recommendation: Approve the recommendation from the Facilities Naming Subcommittee for the naming of the William Denny Weisgerber Auditorium in the new Milpitas Senior Center and the naming of Gerald Way and Gerald Circle to honor Mr. Gerald Ferreira, a Milpitas World War II veteran.

XVI. NEW BUSINESS

- * **4. Approve Water Supply Assessments for the McCarthy Ranch Mixed-Use, Milpitas Square Mixed-Use, and Campus at McCarthy Ranch (Veritas) Projects (Staff Contact: Kathleen Phalen, 586-3345)**

Background: California Senate Bill 610 requires that the City complete a water supply assessment (WSA) before proceeding with any development subject to the California Environmental Quality Act. The WSA must demonstrate that total projected water supplies, over a 20-year period during normal, single-dry and multiple-dry water years, will meet the projected water demands for proposed developments, existing uses and planned future uses. For developments exceeding 500 residential dwelling units, California Senate Bill 221 requires an affirmative written verification of sufficient water supply.

The McCarthy Ranch Mixed-Use, Milpitas Square Mixed-Use and Campus at McCarthy Ranch (Veritas) developments will receive water from the Santa Clara Valley Water District (SCVWD), one of the two wholesalers that supply water to the City. Staff completed WSAs for each of these projects using the City’s 2005 Urban Water Management Plan (UWMP), the City’s 2002 Water Master Plan and SCVWD’s 2005 UWMP.

The McCarthy Ranch development will consist of approximately 1,070,000 square feet of office space and 93,000 square feet of shopping center floor space. The 58.5-acre project site is located between Ranch Drive and Dixon Landing Road, on the west side of McCarthy Boulevard.

The Milpitas Square Mixed-Use development will redevelop the existing Milpitas Square shopping center. The project will consist of six buildings totaling 900 residential units and approximately 175,000 square feet of commercial floor space. The 16.85-acre project site is bounded by Barber Lane to the south, Caltrans property to the west and north, and private property to the east.

The Campus at McCarthy Ranch (Veritas) development will consist of six buildings totaling approximately 1,400,000 square feet of industrial/office floor space, of which approximately 470,000 square feet are existing. The 65-acre project site is located at the northwest corner of McCarthy Boulevard and Ranch Drive.

SCVWD reviewed all three WSA and has concurred that wholesale water supply can be provided for all three projects. Copies of the assessments are included in the Council’s agenda packets.

Fiscal Impact: None.

Recommendation: Approve the Water Supply Assessments for the McCarthy Ranch, Milpitas Square, and Campus at McCarthy Ranch (Veritas) development projects.

- * 5. **Approve Two Youth Sports Assistance Fund Grant Requests (Staff Contact: Aaron Bueno, 586-3226)**

Background: On June 17, 2008, the Milpitas City Council approved and appropriated \$8,000 for the Youth Sports Assistance Fund for FY 2008-09. Included in the City Council packet for review and consideration are two Group Youth Sports Assistance Fund applications.

One Group Youth Sports Assistance Fund application was received from Milpitas Little League Baseball South in the amount of \$1,000, for safety throat guards, catchers' helmets, shin guards, chest protectors and batting helmets to meet National Little League safety requirements.

One Group Youth Sports Assistance Fund application was received from Southpaw Prep Basketball, in the amount of \$1,000, for team travel bags for increased summer travel needs.

The Parks, Recreation and Cultural Resources Commission (PRCRC) and staff reviewed the applications on October 6, 2008 and recommend granting two Group Youth Sports Assistance Fund applications, in the amounts of \$1,000 to the Milpitas Little League Baseball South and \$1,000 to Southpaw Prep Basketball, with Council approval

Fiscal Impact: There is currently a balance of \$7,000 in the 2008–09 Youth Sports Assistance Fund. Approval of two (2) Youth Sports Assistance Fund grants in the amount of \$1,000 each will leave a balance of \$5,000 for the remainder of the fiscal year.

Recommendation: Approve two Group Youth Sports Assistance Fund grants, in the amounts of \$1,000 to the Milpitas Little League Baseball South and \$1,000 to Southpaw Prep Basketball.

- * 6. **Authorize the Police Department to Accept the Wal-Mart Community Grant (Staff Contact: Steve Pangelinan, 586-2426)**

Background: The Milpitas Wal-Mart Store has donated a check in the amount of \$1,000 to the Milpitas Police Department under the auspices of the Wal-Mart Foundation's Community Grants Fund. There was no application required for this donation and there are no specific requirements concerning how these funds are to be expended.

The Police Department is in receipt of the donation and recommends that funds be utilized to purchase community-relations handout materials utilized during the annual National Night Out.

Fiscal Impact: None

Recommendation: Authorize the Police Department to accept the Wal-Mart funds in the amount of \$1,000, and to purchase National Night Out handout materials.

- * 7. **Consideration of the City Council Meeting Schedule for 2009 (Staff Contact: Mary Lavelle, 586-3001)**

Background: The Mayor and Council are requested to consider and adopt their meeting schedule for 2009. Regarding the City Council's summer time meeting schedule, it has been recent tradition to cancel both of the July regular City Council meetings in Milpitas.

City staff has begun to prepare year-long calendars for next year and have inquired of the City Council as to what schedule will be followed in 2009. Staff requests that the City Council act on an affirmative meeting schedule for 2009 for its regular business meetings.

Recommendation: Move to cancel the July 2009 City Council meeting dates.

XVII.

RESOLUTIONS

8. Adopt a Resolution Approving a Minor Site Development Permit No. MS08-0012 for 1485 Country Club Drive (Staff Contact: Tiffany Kunsman, 586-3283)

Background: The applicant is requesting approval to construct a new deck located off the south corner of the main driveway at 1485 Country Club Drive. The proposed deck is consistent with the General Plan and Zoning Ordinance as the deck utilizes materials of natural tones that are aesthetically pleasing and compatible with the existing home and surrounding area. The modification to add a deck will not interfere with the privacy, quiet enjoyment or views from surrounding properties. The Hillside Overlay District requires the application to be approved by both the Planning Commission and by City Council Resolution. The Planning Commission reviewed and recommended approval of the project at its September 24, 2008 meeting.

Fiscal Impact: None.

Recommendation: Adopt a Resolution approving site development permit No. MS08-0012, subject to conditions of approval.

*** 9. Adopt a Resolution to Accept Grant from Federal Emergency Management Agency for the Purchase of Self Contained Breathing Apparatus for the Fire Department (Staff Contact: Geoffrey Maloon, 586-2820)**

Background: On January 11, 2008, the Fire Department received notification from the Federal Emergency Management Agency that the Department's grant application requesting funds for the purchase of new self contained breathing apparatus (SCBA) had been awarded. The total program (SCBA replacement) cost will be \$225,000 with a Federal share amount of \$180,000.00 (80%) and a local cost match of \$45,000 (20%).

SCBA replacement was identified by line and administrative staff as a priority resulting from factors that include the age (15+ years) and unreliability of the units currently in use. SCBA are an integral component of the firefighters personal protective equipment ensemble and failures during suppression operations could lead to serious injury or death.

The National Fire Protection Association is the governing body tasked with adoption and implementation of standards pertaining to all firefighting equipment. The National Fire Protection Association (NFPA) has issued three new SCBA standards since 1992 including the latest standard adopted in September 2007. The SCBA currently in use by Milpitas firefighters do not comply with any of the latest standards. Additionally, continued costs associated with mandatory upgrades, repairs and maintenance are significant.

Rather than use a traditionally bid process, staff recommends bidding the acquisition of the SCBA equipment through the Federal General Services Administration (GSA) process, as authorized under the Milpitas Municipal Code Section I-2-3.08 (b) because it has provided equipment at cost effective pricing in the past. The GSA program provides public agencies a service by providing a list of vendors whose financial status has been checked and approved along with pre-negotiated contracts with standard terms and conditions and equipment price ceilings. The advantage of using the GSA program is a shorter process backed by the Federal government that permits agencies to compete for price and delivery terms with vendors. Prior to purchasing the SCBA equipment, staff shall present the recommended bidder to Council.

Fiscal Impact: Acceptance of this grant requires a local cost match of \$45,000. The cost match is included in the Fire Department's adopted FY 2008-09 budget.

Recommendation: Adopt a Resolution to accept the FEMA grant for self contained breathing apparatus and explore pricing of the SCBA through the GSA program, as provided in Milpitas Municipal Code Section I-2-3.08 (b).

- * 10. **Adopt a Resolution Adopting Local Goals and Policies and Declaring Intention to Establish Community Facilities District No. 2008-1 (Public Services) and to Levy a Special Tax therein and to Provide for the Future Annexation of Territory (Staff Contact: Emma Karlen, 586-3145)**

Background: At its June 3, 2008 meeting, the City Council approved the Transit Area Specific Plan (“TASP”). One of the primary needs of the Transit Area is the funding of ongoing public services without adversely affecting the City’s fiscal outlook and, specifically, to assure a stable, ongoing source of funding to sustain the quality of life in the plan area. To this end, City staff has been working with consultant EPS to perform a fiscal mitigation and service plan analysis for the Transit Area. The accompanying report from EPS, the Fiscal Mitigation and Service Plan Analysis for the TASP, shows the funding gap for general city services based on the projected revenues and expenditures associated with the TASP, assuming development in two phases.

One possible way to help make up the funding gap for services and facilities in the TASP is the creation of a “community facilities district” and the collection of a special tax in that area. In 2005, the City Council previously adopted local goals and policies for the use of community facilities districts in the City. The Fiscal Mitigation and Service Plan Analysis for the TASP analyzes how the formation of a new community facilities district (“CFD 2008-1”) in the TASP would mitigate the fiscal impact of new high density residential development in the area. CFD 2008-1 would finance additional public services, as described in Exhibit B of the draft resolution. Milpitas Station LLC, a developer that plans to develop the properties within S. Milpitas Blvd and Piper Drive, has indicated its readiness to consent to the formation of CFD 2008-1.

If the City Council wishes to establish CFD 2008-1, the City Council must first update those local goals and policies for community facilities districts it previously established in 2005 and adopt a resolution stating its intent to form a new community facilities district. Included in the City Council’s agenda packet is an Amended and Restated Local Goals and Policies for Community Facilities District document that is intended to meet the requirements of California law. In summary, the Amended and Restated Local Goals and Policies for Community Facilities District establish the need for new development to contribute towards the costs of maintaining public services. To achieve this goal, the City shall require all proposed residential development within the boundary map to fund public services by forming or annexing to a CFD. An annual Special Tax will be levied on the new residential property to pay for these services. Undeveloped property, non-residential property, public property or property owner association property are exempt from the annual Special Tax. In addition, affordable housing units that are subject to deed restrictions, resale restrictions and/or regulatory agreements recorded on the property are assessed at reduced rates for the Special Tax.

The Amended and Restated Goals and Policies for the use of community facilities district differs from the 2005 version in that the old document only declared a policy for the funding of park maintenance and street landscape maintenance services. The new goals and policies permit the financing of public infrastructure and an expanded scope of services.

The properties that are subject to the existing community facilities district in the City, CFD 2005-1, will not be affected by the City Council’s adoption of the amended and restated goals and the adoption of a resolution declaring an intention to create a community facilities district in the Transit Area.

Fiscal Impact: None at this time. However, the adoption of this resolution will be the first step to enable the City to levy special tax in the Transit Area to fund essential public services.

Recommendation: Adopt a Resolution adopting an Amended and Restated set of local goals and policies for Community Facilities Districts, declaring its intention to establish Community Facilities District No. 2008-1 (Public Services) and to levy a special tax therein and to provide for the future annexation of territory.

* 11. **Adopt a Resolution Adopting an Identity Theft Prevention Program (Staff Contact: Emma Karlen, 586-3145)**

Background: As part of the Fair and Accurate Credit Transactions Act (“FACTA”) of 2008, the Federal Trade Commission (“FTC”) enacted so-called “Red Flag Rules.” These rules require each creditor with covered accounts for its customers to design and implement a written identity theft prevention program by November 1, 2008. The FTC considers a government entity to be a “creditor” whenever it defers payment for goods or services for its customers and therefore requires such government entities to adopt “Red Flag” identity theft prevention programs. The City of Milpitas has accounts covered by FACTA and must therefore adopt a formal written “Red Flag” Identity Theft Prevention Program by the November 2008 deadline.

The bulk of covered City accounts are those the City maintains for the provision of utility services. Such accounts fall under FACTA, since the City invoices the customers in arrears after consumption of the services and collects personal and financial information in connection with such accounts.

By federal law, a Red Flag Identify Theft Prevention Program must: (1) identify relevant warning signs, including patterns, practices or specific activities, that are indicative of identity theft; (2) detect the red flags that have been incorporated into the program; (3) provide for appropriate responses to such red flags in order to prevent or mitigate identity theft with respect to the covered accounts; and (4) detail a plan to periodically update the program.

The City has a long history of protecting the personal financial and private information of its residents, businesses, and ratepayers. The Identity Theft Prevention Program (copy included in Council agenda packet) formalizes these procedures and is in compliance with FACTA requirements.

Fiscal Impact: None

Recommendation: Adopt a resolution adopting an Identity Theft Prevention Program.

* 12. **Adopt a Resolution Making Findings and Authorizing the Provision of Water Service to a Site Outside of the Urban Growth Boundary and Authorizing the Execution of a Water Supply Agreement with the Milpitas Unified School District and the County of Santa Clara for Air Point School (Staff Contact: Kathleen Phalen, 586-3345)**

Background:

Air Point School (School) is operated by the Milpitas Unified School District (District) and is located at 3001 Calaveras Road adjacent to the Spring Valley Golf Course. The School is served by an on-site groundwater well with water quality degraded by coliform bacteria contamination. The State Department of Public Health (CDPH) is requiring the District to acquire an additional water supply because it has determined that the existing supply is inadequate to meet the health and safety needs of the School.

The District has asked the City of Milpitas to grant a permanent connection to the City’s municipal water supply. However, the closest City water main is several thousand feet away from the School and it would be very expensive for the School to extend this main to its property. The City does provide drinking water to Santa Clara County for Ed Levin County Park and Spring Valley Golf course which has a water mainline adjacent to the School. Therefore, to address the School’s needs, City, County, and District staff have developed a three-party Water Supply Agreement to serve the School with City water conveyed through the County’s on-site

distribution system. The agreement identifies the City as the retailer, the County as the conveyor through its on-site water distribution system, and the District as the water customer and the owner of the new facilities required to facilitate the connection.

The School is located within the City limits but is outside the Urban Growth Boundary. The Milpitas General Plan permits the City to provide municipal water service to such a location, but only if it can make findings that:

1. An urgent public health or safety concern exists,
2. An independent certified professional engineer determines that City supply is the only economically justifiable solution to the health and safety concern,
3. The applicant had a vested right to develop an approved land use on or before November 3, 1998, and
4. The applicant is responsible for its proportionate share of the cost to provide service.

Staff has concluded that all of the above criteria have been met and that the permanent water supply connection will not affect the ability of the City to meet its customer demand. In particular, staff has reviewed documents from the CDPH and the School and also reviewed a professional engineering report from Pakpour Consulting Group, Inc. on conditions at the School site. At its April 17, 2007 meeting, the Council Utility Rate Subcommittee granted conceptual approval that the criteria have been met and recommended that this item be placed on a future City Council meeting agenda to make findings and approve the three-party water service agreement. Approval by the Local Agency Formation Commission of Santa Clara County is not required since the School is located within City Limits.

A letter from the District and other documentation that support the required findings are found in the Council packet and referenced or summarized herein and in the proposed resolution.

Fiscal Impact: The District is responsible for the water connection fees and the construction cost of the water supply connection. The City will waive encroachment permit fees as noted in the Water Supply Agreement.

Recommendation: Adopt a Resolution making findings authorizing water service to a site outside of the urban growth boundary (Air Point School) and authorizing the execution of a water supply agreement with the Milpitas Unified School District and the County of Santa Clara, subject to approval as to form by the City Attorney.

*** 13. Adopt a Resolution Authorizing Reduction of Subdivision Improvement Bonds for Tract 9697 and Tract 9699, Project No. 3160 (Staff Contact: Fernando Bravo, 586-3328)**

Background: In 2006, the City entered into two separate Subdivision Improvement Agreements with KB Home South Bay Inc., for the construction of certain public improvements to serve Tract 9697 and Tract 9699 residential development on South Abel Street. More than 90% of the public improvements consisting of water mains, sewer mains and pavings have been completed by the developer. In accordance with the Government Code, the developer's faithful performance bond may be reduced to \$91,600.00 for Tract 9697 and \$55,780.00 for Tract 9699, which is 10% of the contract amount.

The completed public improvements will continue to be maintained by the developer until such time when all the required public improvements are completed and accepted by the City.

Fiscal Impact: None

Recommendation: Adopt a resolution authorizing reduction in penal sum of subdivision improvement bonds, for public improvements at KB Home site, Project No. 3160.

- * 14. **Adopt a Resolution Approving the Next Generation Click it or Ticket Program Agreement with the Regents of the University of California Berkeley School of Public Health Traffic Safety Center and the California Office of Traffic Safety (Staff Contact: Henry Kwong, 586-2419)**

Background: The Regents of the University of California Berkeley School of Public Health Traffic Safety Center and the California Office of Traffic Safety are administering the “Next Generation – Click it or Ticket” program that offers mini-grant funds to reimburse law enforcement agencies for overtime expenditures specifically directed towards seat belt enforcement campaigns. The goal is to increase statewide seat belt use to 96% by September 8, 2009. The City of Milpitas Police Department was approved for \$20,000 to conduct periodic seat belt enforcement campaigns in Milpitas from November 17, 2008 to September 7, 2009.

Fiscal Impact: None – The City will incur extra overtime charges to implement the program which will be reimbursed by the OTS pursuant to the Grant.

Recommendations:

1. Adopt a Resolution approving the agreement with Regents of the University of California Berkeley School of Public Health Traffic Safety Center and CA Office of Traffic Safety.
2. Authorize the Chief of Police to execute the agreement, subject to approval as to form by the City Attorney.

XIX. BIDS AND CONTRACTS

- * 15. **Award Construction Contract to West Valley Construction Company, Inc. for Air Relief Valve Modifications, Project No. 7086 (Staff Contact: Jeff Leung, 586-3326)**

Background: On June 17, 2008, City Council approved the project plans and specifications and authorized the advertisement for construction bids for air relief valve modifications. The project retrofits fifty-eight air relief valves on the City water supply system. These valves will be relocated from below ground level to above ground level, and the work will include installation of new valve enclosures. These improvements are required in order to comply with California Department of Public Health requirements (State Code, Title 22, Chapter 16).

The Engineer’s Estimate was \$176,000. The project was advertised and eleven (11) sealed bids were opened on October 8, 2008, which ranged from \$173,851.00 to \$352,318.00. The lowest responsible bidder is West Valley Construction Company, Inc. with a bid of \$173,851.

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

Recommendation: Award a construction contract to West Valley Construction Company, Inc. for the Air Relief Valve Modifications, Project No. 7086, in the amount of \$173,851.

- * 16. **Approve Amendment to the Agreement between the County of Santa Clara and the City of Milpitas Providing for Administration of the Unified Hazardous Waste and Hazardous Materials Management Program (Staff Contact: Patricia Joki, 586-3370)**

Background: In 1994, the State legislature passed into law Senate Bill 1082 which mandated the consolidation of certain hazardous waste and hazardous material regulatory programs. In 1997, the City and County entered into an agreement to implement this law that met the needs of the City and County, and satisfied the State regulations.

Under the agreement the City and County continue to implement all of the regulatory programs traditionally provided. In addition, the City functions as the primary point of contact for businesses within the City for a single billing and collection system for all affected regulatory programs (whether City or County directed), and for a single inspection program for most small and moderate sized businesses covered by this law.

This is the first amendment to the agreement. It is needed due to the recently passed Assembly Bill 1120 (Laird) which transferred responsibility for the State Aboveground Petroleum Storage Act program from the State Regional Water Quality Control Board to the County. Grant monies have been awarded to Santa Clara County Environmental Health for staff training, and business outreach and education through 2009. Facility inspections must begin in January – March 2010. The Health and Safety Code allows for cost recovery of program administration and inspection activity. The amendment also transfers responsibilities for the single fee collection and permit consolidation program from the City to the County to streamline these operations between jurisdictions.

Fiscal Impact: None, based upon grant monies awarded to Santa Clara County available for City staff training and outreach efforts through 2009.

Recommendation: Approve the amendment to the Agreement between the County of Santa Clara and the City of Milpitas to address legislative changes and to streamline the single fee collection and permit consolidation program between agencies.

- * 17. **Authorize the City Manager to Execute a Cost-Sharing Agreement with Santa Clara Valley Water District to Provide a One-to-One Match for the Water Efficient Landscape Rebate for Residential Customers (Staff Contact: Kathleen Phalen, 586-3345)**

Background: At the September 16, 2008 meeting, Council authorized the City Manager to negotiate a cost-sharing agreement with the Santa Clara Valley Water District (SCVWD) for a City pilot rebate program for water efficient landscaping. Currently, SCVWD offers a rebate of \$75 per 100 square feet to replace high water-demand plants, such as turf grass, with low water-demand plants or permeable hardscape. SCVWD caps its rebate at \$1,000 per eligible property for Santa Clara County residents.

To increase the incentive for water conservation, the City will match the SCVWD rebate to double the amount for eligible City residents. The City match will be offered on a trial basis during FY 2008-09. The maximum individual City-provided rebate will be capped at \$1,000 per applicant (thereby providing a total possible combined SCVWD-City rebate of \$2,000 per eligible property). The City's total monetary participation in the conservation program shall not exceed \$5,000, thereby allowing for the funding of a minimum of five matching rebates for eligible City residents in FY 2008-09.

Fiscal Impact: None. Funding in an amount not exceeding \$5,000 will be drawn from the Utility Engineering Water Community Promotions budget (account 400-416-4201), which has sufficient funds for the purpose of water conservation.

Recommendation: Authorize the City Manager to execute a cost-sharing agreement with Santa Clara Valley Water District to provide a one-to-one match for the Water Efficient Landscape Rebate for City of Milpitas residential customers, in an amount not to exceed \$5,000, subject to approval as to form by the City Attorney.

- * 18. **Authorize the City Engineer to Execute Contract Change Order No. 10 with Anderson Pacific for the 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, and site improvements including drainage, parking areas, perimeter fencing and lighting. This project is

currently on schedule and on budget. As construction progresses, additional unforeseen work and modifications are identified.

Staff has prepared a contract change order for 12 items of work, which are detailed in the staff report included in the Council's packets. This added work would require a time extension of 25 working days. The cost of this change order is \$106,189 and is considered reasonable for the work and materials involved. The project is approximately 95% complete and the expended change order contingency, including this change order, is 85%.

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

Recommendation: Authorize the City Engineer to execute Contract Change Order No. 10 to the contract with Anderson Pacific Engineering Construction, Inc. in the amount of \$106,189 for the Main Sewage Pump Station, Project No. 6103.

XXI. ADJOURNMENT

**NEXT REGULAR MEETING
TUESDAY, NOVEMBER 4, 2008**