



**MILPITAS CITY COUNCIL MEETING AGENDA
NOVEMBER 4, 2008**

**7:00 P.M. (PUBLIC BUSINESS)
455 E. CALAVERAS BOULEVARD**

SUMMARY OF CONTENTS

- I. CALL TO ORDER/ROLL CALL**
- II. PLEDGE OF ALLEGIANCE**
- III. INVOCATION** (Councilmember Giordano)
- IV. APPROVAL OF COUNCIL MEETING MINUTES** – October 21, 2008
- V. SCHEDULE OF MEETINGS** – Council Calendar for November 2008
- VI. 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.

- VII. ANNOUNCEMENTS**
- VIII. ANNOUNCEMENT OF CONFLICT OF INTEREST**
- IX. APPROVAL OF AGENDA**
- X. CONSENT CALENDAR** (Items with asterisk*)
- XI. UNFINISHED BUSINESS**
 - * 1. Receive Report on Summary Abatement of an Immediate Hazard to the Public at 874 Berryessa Street (Staff Contact: Thomas Williams, 586-3050)**
- XII. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING**
 - RA1. Call to Order by the Mayor/Chair**
 - RA2. Roll Call**
 - RA3. Approval of Minutes** (October 21, 2008)
 - RA4. Approval of Agenda and Consent Calendar** (Items with asterisk*)
 - RA5. Receive Progress Report on the New Library and North Main Streetscape, Projects No. 8162 and No. 8165 (Staff Contact: Steve Erickson, 586-3414)**
 - RA6. Accept the City's Comprehensive Annual Financial Report, Component Unit Financial Statements, and Other Related Annual Audited Reports for the Fiscal Year Ended June 30, 2008 (Staff Contact: Emma Karlen, 586-3145)**

- RA7. Receive Financial Status Report for the Three Months Ended September 30, 2008 (Staff Contact: Emma Karlen, 586-3145)
- *RA8. Receive City of Milpitas Investment Portfolio Status Report for the Quarter Ended September 30, 2008 (Staff contact: Emma Karlen, 586-3145)
- *RA9. Accept the Milpitas Redevelopment Agency Fiscal Year 2007-08 Annual Report (Staff Contact: Emma Karlen, 586-3145)
- *RA10. Approve Plans and Specifications for Milpitas Senior Center, Project No. 8176 (Staff Contact: Greg Armendariz, 586-3317)
- *RA11. Approve New Capital Improvement Project and Budget Appropriation for Carlo Street Ramp Conversion Project, Approve Plans and Specifications, and Authorize the Advertisement for Bid Proposals (Staff Contact: Greg Armendariz, 586-3317)
- *RA12. Approve \$200,000 Advance From the Redevelopment Project Fund into the Transit Area Impact Fee Fund and Appropriate Those Funds for Payment to the City of San Jose Pursuant to Legal Settlement (Staff Contact: James Lindsay, 586-3273)
- *RA13. Authorize the Executive Director to Execute a Contract Change Order and Approve Budget Appropriation for Singley Area Street Rehabilitation, Phase V, Project No. 8193 (Staff Contact: Jaime Rodriguez, 586-3335)
- *RA14. Award Construction Contract to Bond Blacktop, Inc. for the Street Crack Seal Project FY 2008-09, Project No. 8194 (Staff Contact: Jaime Rodriguez, 586-3335)
- *RA15. Approve Budget Appropriation to Appropriate Proposition 42 (Traffic Congestion Relief) Funds into the Street Resurfacing Project 2009, Project No. 8194 (Staff Contact: Jaime Rodriguez, 586-3335)
- *RA16. Authorize the Executive Director to Execute an Agreement with Nichols Consulting Engineers CHTD, for Pavement Management Program Update, Project No. 8194 (Staff Contact: Jaime Rodriguez, 586-3335)
- RA17. Agency Adjournment

XIII. REPORTS OF OFFICER, COMMISSION AND COMMITTEE

City Council

- 2. Consider Request from Mayor Esteves for Additional Funding for the Milpitas Food Pantry (Contact: Mayor Esteves, 586-3029)
- * 3. Consider Mayor's Recommendations for Appointments/Re-Appointment to Milpitas Commissions (Contact: Mayor Esteves, 586-3029)

Public Art Committee

- * 4. Approve Art in Your Park Project for Pinewood Park (Staff Contact: Renee Lorentzen, 586-3231)

Recycling and Source Reduction Advisory Commission

- * 5. Receive Staff Report on the Recommendation to Restrict Provision of Water by Restaurants and Direct Staff to Provide Targeted Water Conservation Outreach to Restaurants (Staff Contact: Kathleen Phalen, 586-3345)

XIV. RESOLUTIONS

- * 6. **Adopt a Resolution Granting Final Acceptance of the Reservoir Evaluation and Upgrade, Project No. 7091, and Authorize Payment to San Jose Water Company for the Gibraltar Reservoir and Pump Station, Project No. 7101 (Staff Contact: Jeff Leung, 586-3326)**
- * 7. **Adopt a Resolution Making Findings for Unexpended Development Fees and Review and Accept the Annual Developer Fee Disclosure Information (Staff Contact: Emma Karlen, 586-3145)**

XV. BID AND CONTRACT

- * 8. **Approve Plans and Specifications, Authorize the Advertisement for Bids for Highway 237/I-880 Interchange Monument Sign, and Authorize the City Manager to Execute a Freeway Sign Maintenance Agreement and Other Necessary Documents, Project No. 4170 (Staff Contact: Jeff Leung, 586-3326)**

XVI. ADJOURNMENT

XVII. MILPITAS CONNECTION BOARD OF DIRECTORS MEETING

MC1. Call to Order by the Mayor

MC2. Roll Call

MC3. Appoint Two Directors and Execute Certificate of Dissolution and Certificate of Election to Wind Up and Dissolve and Authorize Necessary Persons to Execute Documents for the Dissolution of The Milpitas Connection, Inc. (Staff Contact: Bronwen Lacey, 586-3043)

MC4. Adjournment

**NEXT REGULAR MEETING
TUESDAY, NOVEMBER 18, 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 (alternates)

Public Art Committee (at large)

Emergency Preparedness Commission

Mobile Home Park Rental Review Board

Parks, Recreation and Cultural Resources Commission (alternate)

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

XI. UNFINISHED BUSINESS

- * 1. **Receive Report on Summary Abatement of an Immediate Hazard to the Public at 874 Berryessa Street (Staff Contact: Thomas Williams, 586-3050)**

Background: On October 16, 2008, the City received several complaints from the public and calls from various news stations regarding the trash and graffiti at 874 Berryessa St. The Police Department first responded and reported that the yard was littered with trash, unknown liquids, oils and solvents, and that the front and garage doors were wide open. The responding officer made a vandalism report. The City Manager, Fire Chief, Fire Marshal and Code Enforcement Officers responded to the property. Pursuant to Milpitas Municipal Code section V-202-12.01, the City Manager determined that the accumulation of trash, including a car battery and extensive amounts of dog feces adjacent to the public right-of-way, the easily accessible condition of the vacant home, and the three-foot high dried weeds and mattresses in the back yard and side yard constituted an immediate threat to the public health and ordered the situation to be abated.

The Department of Public Works removed all of the refuse and rubbish in the front yard, abated the weeds in the back yard, covered the broken windows, removed the graffiti and secured the front and garage doors. The gas, electricity, and water were all disconnected. During the clean-up, the former tenant of 874 Berryessa St. and owner of the items in the front yard appeared and signed a statement authorizing that the debris in the front yard could be discarded. Once the Department of Public Works collected all of the trash, it was hauled away to Newby Island. The City incurred \$2,518.78 to abate the hazard at 874 Berryessa St.

Prior to conducting the site visit, Code Enforcement officers conducted an APN search to determine the owner of 874 Berryessa St. and confirmed that Deutsche Bank in care of Barclays Capital Real Estate was the present owner. Staff then attempted to contact Barclays Capital Real Estate, but was only able to leave a message for the listed bank representative. Eventually, staff spoke with a Barclays' representative who would not provide any information or even confirm that Barclays was the property owner. Staff informed the representative that the home had been trashed, that the media was covering the matter, and that the City urgently needed to speak with someone with authority over the property. The next day, a Barclays' representative contacted staff, who informed the representative of the property's condition and the City's action. In addition, Barclays was informed that as the property owner, it would be billed for the City's abatement costs.

Pursuant to Municipal Code section V-202-12.02, the City Council may order the owner to show cause at a public hearing as to why the owner is not liable for the City's costs of abatement after a danger to the public has been abated on the owner's property.

Fiscal Impact: None

Recommendation: Move to issue an order to show cause why the costs of abatement should not be paid by the owner of 874 Berryessa Street at a public hearing on December 16, 2008 and send notice of the hearing to the property owner.

XII. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

- RA1. **Call to Order by the Mayor/Chair**
- RA2. **Roll Call**
- RA3. **Approval of Minutes** (October 21, 2008)

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

RA5. Receive Progress Report on the New Library and North Main Streetscape, Projects 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.

Library, Project No. 8162

S. J. Amoroso continues with finishes, punch-list repairs, and final clean-up in preparation of project completion by the end of November, and initial acceptance of the project in December. The work remains on schedule and budget.

N. Main Streetscape, Phase II, Project No. 8165

The contractor has completed final paving of the Winsor cul-de-sac improvements and has completed the demolition of portions of North Main Street from the State Route 237 off-ramp south to Carlo Street. North Main Street work supporting the new library will be completed prior to the library grand opening. The work remains on schedule and budget.

Fiscal Impact: None.

Recommendation: Receive progress report from staff on the new Milpitas Library and North Main Streetscape Projects No. 8162 and No. 8165.

RA6. Accept the City's Comprehensive Annual Financial Report, Component Unit Financial Statements, and Other Related Annual Audited Reports for the Fiscal Year Ended June 30, 2008 (Staff Contact: Emma Karlen, 586-3145)

Background: Transmitted are the Comprehensive Annual Financial Report (CAFR) of the City of Milpitas, Milpitas Redevelopment Agency Component Unit Financial Statements, Single Audit Report, Agreed Upon Procedures Report on Compliance with the Appropriations Limit Increment and the Memorandum on Internal Control Structure for the fiscal year ended June 30, 2008.

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

The CAFR presents the operations and financial activity of all of the City's various funds, including the General Fund. It includes an unqualified audit opinion from Maze & Associates, the City's external auditors that the financial statements present fairly the results of operations for the year ended June 30, 2008, in conformance with Generally Accepted Accounting Principles (GAAP).

Milpitas Redevelopment Agency Component Unit Financial Statements

The Milpitas Redevelopment Agency is a component unit of the City of Milpitas. The accompanying component unit financial statements present the operations and financial activity of the Milpitas Redevelopment Agency including the Agency's redevelopment project fund and housing reserve fund. The Agency's Component Unit Financial Statements include an unqualified audit opinion from Maze & Associates, the Agency's external auditors that the financial statements present fairly the results of operations for the year ended June 30, 2008, in conformance with GAAP. The report from Maze & Associates also includes a Compliance Report indicating that the Agency complied, in all material respects, with provisions of laws and regulations contained in the Guidelines for Compliance Audits of California Redevelopment Agencies issued by the State Controller's Office.

Single Audit Report

The Single Audit Report for the fiscal year ended June 30, 2008. The Single Audit is required by the Office of Management and Budget Circular A-133 for state and local governments and non-profit organizations that receive Federal Awards. These reports did not disclose any reportable conditions, or material weaknesses, although the auditors found significant deficiency of the City's internal control over the U.S. Department of Homeland Security program. The Fire

Department received a fully equipped urban search and rescue trailer from the Santa Clara County Fire Department in April 2005 which was funded by the Urban Area Security Initiative grant but did not inform the Finance Department until fiscal year 2008. Furthermore, staff cannot locate the grant agreement, consequently, the auditor was unable to determine whether the City was in compliance with the requirements of the grant. However, it should be noted that beginning in 2006, the Fire Chief established an inventory program for the rescue trailer that documents the inventory of the trailer quarterly and after each use. In addition, the Fire Chief enforced the reporting of all grants and grant-related equipment to the Finance Department.

Agreed Upon Procedures Report on Compliance with the Appropriations Limit Increment

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

Memorandum on Internal Control Structure

Under generally accepted auditing standards, the auditors are encouraged to report certain matters regarding the City's internal control structure. The City's auditors have provided such a report in their Memorandum on Internal Control Structure ("Management Letter") for the Year Ended June 30, 2008. This report includes management response to the auditor's letter. It should be noted that the auditors do not view any of their comments as material weaknesses however they found several significant deficiencies in the City's internal control structure. Staff will discuss these deficiencies at the Council meeting.

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

Recommendation: Accept the City's Comprehensive Annual Financial Report, the Redevelopment Agency Component Unit Financial Statements, and other related Annual Audited Reports for the fiscal year ended June 30, 2008.

RA7. Receive Financial Status Report for the Three Months Ended September 30, 2008 (Staff Contact: Emma Karlen, 586-3145)

Background: As of September 30, 2008, the General Fund received approximately \$6.8 million in revenues, which were slightly lower (3.1%) than the revenues received for the same period in FY 07-08. Compared to the budgeted revenues, the total year-to-date revenues were on track although there were variances in different revenue categories. Recent housing market decline coupled with the problem of sub-prime mortgages continued to have a negative impact on the City's revenues such as sales tax, building permits and charges for services primarily related to private developments. The true impact of the economy on sales tax revenues will be felt in the second quarter during the holiday shopping season.

Building permits and inspection fees decreased by about \$200,000 compared to the same period last year entirely due to a decrease of dedicated inspector revenue. As some of the major development projects were either completed or on hold, the necessity of providing dedicated inspector services decreased. Similarly, service revenues received from private developments were also affected. There was less utilization of Engineering and Planning services to review private jobs during the first quarter of this year.

Sales tax revenue was up 7.8% or \$168,000 compared to the same period last year but, part of the increase was due to timing of the receipts, which does not reflect actual increase. Typically, the State Board advanced sales tax revenue to the local agencies for three months and reconciled at the end of the quarter. The sales tax report from the City's consultant indicated that sales tax revenue went up by 5.8% in the first quarter instead of 7.8%. The increases came from the auto sales (Piercey Toyota opened in November 2007) and retail business segments but business to business and construction segments were down compared to last year. Transient occupancy tax remained strong and was up about 8.5% or \$74,000 compared to last year.

City departments' expenditures were on track with their budget although General Fund year-to-date expenditures were about \$488,000 (or 2.9%) over same period last year. It should be noted

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

Fiscal Impact: None

Recommendation: Receive financial status report for the three months ended September 30, 2008.

***RA8. Receive City of Milpitas Investment Portfolio Status Report for the Quarter Ended September 30, 2008 (Staff contact: Emma Karlen, 586-3145)**

Background: In compliance with California Government Code and the City's Investment policy, the City of Milpitas Investment Report for the quarter ended September 30, 2008 is submitted for the City Council/Agency's review and acceptance.

The Portfolio Summary Report included in the Council's packet provides a summary of the City's investments by type. It lists the par value, market value, book value, percentage of portfolio, term, days to maturity and the equivalent yields for each type of investment. The Portfolio Details Report provides the same information for each individual investment in the City's portfolio as of September 30, 2008.

As of September 30, 2008, the principal cost and market value of the City's investment portfolio was \$189,600,246 and \$190,558,098 respectively. When market interest rates increase after an investment is purchased, the market value of that investment decreases. Conversely, when market interest rates decline after an investment is purchased, the market value of that investment increases. If the investments are not sold prior to the maturity date, there is no market risk. Therefore, in accordance with the City's investment policy, all investments are held until maturity to ensure the return of all invested principal.

The City's effective rate of return for the period ended September 30, 2008 was 3.58%. The comparative benchmarks for the same period were 2.52% for LAIF (Local Agency Investment Fund) and 2.48% for the 12-month average yield of the 2 year Treasury Note. Excluding the long-term GNMA securities and investment of the bond proceeds, the weighted average maturity of the portfolio was 468 days.

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

The following graphs are included in the agenda packet: Investment by maturity levels, Comparison of the City's portfolio yields to other benchmark yields and a trend of the type of securities in the City's portfolio, weighted average maturity and average yield.

Fiscal Impact: None.

Recommendation: Receive the City of Milpitas investment report for the quarter ended September 30, 2008.

***RA9. Accept the Milpitas Redevelopment Agency Fiscal Year 2007-08 Annual Report (Staff Contact: Emma Karlen, 586-3145)**

Background: Pursuant to the reporting requirements of the Community Redevelopment Law and the Agency's bylaws, the Agency must prepare a report annually to its legislative body within six months of its fiscal year end. Staff prepared the Fiscal Year 2007-08 Annual Report to provide the Agency board members with an overview of redevelopment activities and accomplishments for the two project areas. An independent financial audit report will be presented for the Agency Board's acceptance on a separate agenda on November 4, 2008.

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

Recommendation: Accept the Milpitas Redevelopment Agency Fiscal Year 2007-08 Annual Report.

***RA10. Approve Plans and Specifications for Milpitas Senior Center, Project No. 8176 (Staff Contact: Greg Armendariz, 586-3317)**

Background: At the May 6, 2008 meeting, the Agency authorized the design work to proceed to the Construction Document phase. Staff has been working closely with Noll & Tam Project Architects and the Fire and Building Departments (for code compliance) on the construction documents for the new facility. Plans and specifications for the project have now been completed.

The Senior Facilities Subcommittee received an update on the project from Noll & Tam Architects on October 27, 2008.

The Engineer's Estimate for the work is approximately \$11,000,000. 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.

Recommendation: Approve plans and specifications for the Milpitas Senior Center, Project No. 8176.

***RA11. Approve New Capital Improvement Project and Budget Appropriation for Carlo Street Ramp Conversion Project, Approve Plans and Specifications, and Authorize the Advertisement for Bid Proposals (Staff Contact: Greg Armendariz, 586-3317)**

Background: At the December 5, 2006 City Council meeting, staff was directed to work with the California Department of Transportation (Caltrans) and provide an engineering study for the conversion of the Carlo Street on-ramp to Eastbound Calaveras Boulevard (SR237) to an off-ramp, in order to provide more direct access to the Midtown area of the City. Based on this study, an alignment alternative for the new off-ramp was identified with assistance from Caltrans.

The new Carlo Street off-ramp will be located approximately 100 feet east of the Calaveras Boulevard and Abel Street intersection and will serve as the first phase of the ultimate widening of Calaveras Boulevard between Abel Street and Town Center Drive from 4 lanes to 6 lanes. The alignment of the Carlo Street off-ramp was designed to function with both existing and long-term improvements along Calaveras Boulevard.

Design work proceeded last summer and final plans and specifications for the construction of the Carlo Street off-ramp are now complete. In addition, the environmental clearance for the project, was certified by the City Council at its October 7, 2008 meeting with the adoption of the Midtown Supplemental Environmental Impact Report.

The project estimate for construction, inspection, permits, materials testing, projects management and project contingency is \$1,500,000.

This item was scheduled to be presented at the October 29, 2008 Finance Subcommittee meeting.

A copy of the project plan title sheet is included in the Council's agenda packet. Complete plans and specifications are available for review in the City Engineer's office.

Fiscal Impact: A budget appropriation of \$1.5 million is recommended from the interest earnings of the 2003 RDA Tax Allocation Bonds to fund this new project.

Recommendations:

1. Approve new Capital Improvement Project and budget appropriation for the "Carlo Street Ramp Conversion Project."
2. Approve Plans and Specifications, and authorize the Advertisement for Bid Proposals for Carlo Street Ramp Conversion Project.

***RA12. Approve \$200,000 Advance From the Redevelopment Project Fund into the Transit Area Impact Fee Fund and Appropriate Those Funds for Payment to the City of San Jose Pursuant to Legal Settlement (Staff Contact: James Lindsay, 586-3273)**

Background: In August 2006, the City entered into a Settlement Agreement with the City of San Jose to address fair-share contributions towards mitigation of transportation impact within each City, from the North San Jose Area Development Policies Update and the Milpitas Transit Area Specific Plan (TASP) projects. One of Milpitas' obligations in the agreement is to provide San Jose with \$200,000 to address significant traffic impacts from the TASP to the Capitol Avenue corridor in San Jose, within 120 days of the certification of the TASP Environmental Impact Report.

Funding this obligation was included in the Transit Area Development Impact fee program. The Transit Area Impact Fee Fund does not have any funding available since no fees have been collected. Therefore, staff recommends the Redevelopment Agency advance \$200,000 to the Transit Area Impact Fee Fund to cover the payment to the City of San Jose.

Fiscal Impact: There are sufficient funds in the Redevelopment Project Fund to advance this temporary loan.

Recommendation: authorize and approve the advance of \$200,000 from the Redevelopment Fund to the Transit Area Impact Fee Fund, and appropriate those funds for payment to the City of San Jose, pursuant to the legal settlement.

***RA13. Authorize the Executive Director to Execute a Contract Change Order and Approve Budget Appropriation for Singley Area Street Rehabilitation, Phase V, Project No. 8193 (Staff Contact: Jaime Rodriguez, 586-3335)**

Background: The City Council awarded the Singley Area Street Rehabilitation Phase V project to Granite Construction Company on June 17, 2008. The project provides reconstruction of roadway sections, including installation of drainage improvements in the Singley Area to eliminate water ponding on the streets, due to differential settlement of concrete gutters and road pavement surfaces. Construction of these improvements are programmed for the following streets:

<u>Street</u>	<u>Segment</u>
Hamilton Avenue	Merz Court to Enriquez Court
Hamilton Avenue	Tramway Drive to Escuela Parkway
Tramway Drive	Milpitas Boulevard to Donahe Drive
Tramway Drive	Escuela Parkway to Wyoma Place
Chad Drive	Singley Drive to Aaron Park Drive
Whittier Street	Entire Segment

During construction, staff increased the project scope to install four additional handicap ramps at Escuela Place & Escuela Parkway and Escuela Parkway & Tramway Dr to comply with the

American with Disabilities Act (ADA) requirements along with additional sidewalk, and curb and gutter repair at these locations. Staff negotiated a fee not to exceed \$48,100 for this change, considered reasonable for the work involved.

Fiscal Impact: A budget appropriation in the amount of \$48,100 from the RDA Fund is required to fund and approve this change order.

Recommendations:

1. Authorize the Executive Director to execute a contract change order with Granite Construction for the Singley Area Street Rehabilitation, Phase V, Project No. 8193 in the amount not to exceed \$48,100.
2. Approve a budget appropriation in the amount of \$48,100 from the RDA Fund.

***RA14. Award Construction Contract to Bond Blacktop, Inc. for the Street Crack Seal Project FY 2008-09, Project No. 8194 (Staff Contact: Jaime Rodriguez, 586-3335)**

Background: On October 7, 2008, the City Council approved the project plans and specifications for the Street Crack Seal Project FY 2008-09 and authorized the advertisement for construction bid proposals. The project will seal existing cracks in the pavement on the following streets to prevent further pavement damage over the winter. The same streets will then receive slurry seal or street resurfacing treatments next year.

Street	Segment
Adam Avenue	Gadsden Drive to Temple Drive
Arana Ccourt	Temple Drive to East End of Street
Brian Court	Michael Street to West End of Street
Calle Oriente	Park Victoria Drive to East End of Street
Dennis Avenue	Temple Drive to East End of Street
Evans Road	N Park Victoria Dr to Calle Oriente
Fair Hill Drive	Temple Drive to Spring Valley Lane
Gadsden Avenue	Adams Avenue to Ellis Avenue
Golden Hills Drive	Temple Drive to Spring Valley Lane
Kennedy Drive	Park Victoria Drive to Evans Road
Lynn Avenue	Adam Avenue to Kennedy Drive
Michael Court	Michael Street to West End of Street
Michael Street	Brian Court to Evans Road
Milpitas Boulevard	Beresford Court to Tramway Drive
Old Evans Road	Kennedy Drive to Serpa Drive
Prada Court	Prada Drive to East End of Street
Prada Drive	Kennedy Drive to Traughber Street
Quail Drive	Simas Drive to East End of Street
Ramos Court	Quail Drive to North End of Street
Santos Court	Stemel Way to North End of Street
Serpa Drive	Quail Drive to Old Evans Road
Simas Drive	Kennedy Drive to Stemel Way
Spring Valley Lane	Golden Hills Drive to Fair Hill Drive
Stemel Court	Stemel Way to North End of Street
Stemel Way	Prada Drive to Evans Road
Temple Drive	Calaveras Boulevard to Kennedy Drive
Traughber Street	Park Victoria Drive to East End of Street
View Drive	Temple Drive to Spring Valley Lane

The Engineer's Estimate was \$80,000. The project was advertised and four (4) sealed bid proposals were received and opened on October 24, 2008 ranging from \$60,000 to \$129,850, with the lowest responsible bidder Bond Blacktop, Inc., with a bid of \$60,000.

Fiscal Impact: None. This work was programmed and there are sufficient funds in the current project budget.

Recommendations: Award the Construction Contract to Bond Blacktop, Inc., for the Street Crack Seal Project FY 2008-09, Project No. 8194, in the amount of \$60,000.

***RA15. Approve Budget Appropriation to Appropriate Proposition 42 (Traffic Congestion Relief) Funds into the Street Resurfacing Project 2009, Project No. 8194 (Staff Contact: Jaime Rodriguez, 586-3335)**

Background: The City has received a payment of \$170,000, as the City's share from State Proposition 42 (Traffic Congestion Relief) funds. Staff recommends appropriation of these funds into the Street Resurfacing Project 2009, Project No. 8194.

Fiscal Impact: None.

Recommendation: Approve the budget appropriation of Proposition 42 funds, totaling \$170,000, into the Street Resurfacing 2009 Project, Project No. 8194.

***RA16. Authorize the Executive Director to Execute an Agreement with Nichols Consulting Engineers CHTD, for Pavement Management Program Update, Project No. 8194 (Staff Contact: Jaime Rodriguez, 586-3335)**

Background: The City's Pavement Management System (PMS) is updated annually as part of the Street Resurfacing Project, No. 8194, included in the approved Capital Improvement Program. Through the City's consultant selection process, Nichols Consulting Engineers Chtd. has been selected to provide the professional engineering services required to update the PMS. The work includes pavement distress/condition surveys of approximately 36 centerline miles or a third of all City streets, calculate new pavement condition indices (PCI) for all streets, perform budgetary analysis, and prepares a final report to the City. Staff negotiated a scope and fee for these services not to exceed \$31,300, which is considered reasonable for the work.

Fiscal Impact: None. This work was programmed and there are sufficient funds in the project budget for these consultant services, Street Resurfacing Project 2009, Project No. 8194.

Recommendation: Authorize the Executive Director to execute an agreement with Nichols Consulting Engineers Chtd., in the amount of \$31,300 for the Pavement Management System, Street Resurfacing Project No. 8194, subject to approval as to form by the City Attorney.

RA17. Agency Adjournment

XIII. REPORTS OF OFFICER, COMMISSION AND COMMITTEE

City Council

2. Consider Request from Mayor Esteves for Additional Funding for the Milpitas Food Pantry (Contact: Mayor Esteves, 586-3029)

Background: Mayor Esteves requested that the City Council consider making an additional donation to the Milpitas Food Pantry. The City Council has previously allocated \$11,256.46 to the Food Pantry, as an agency recipient of Community Development Block Grant Funding for FY 2008-09.

This request was scheduled on the agenda for discussion by the City Council Finance Subcommittee on October 29, 2008.

Fiscal Impact: Funding could be allocated from the City Council Community Promotions unallocated budget, in which \$10,000 was budgeted for FY 2008-09.

Recommendation: Per Mayor Esteves request, consider making a donation from Community Promotions Unallocated budget to provide additional funding to the Milpitas Food Pantry.

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

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

Emergency Preparedness Commission:

Appoint Arlyn Swiger (current Alternate No. 1) as a regular member to a term that expires in June 2009.

Appoint Stephen Strauss (current Alternate No. 2) as Alternate No. 1 to a term that expires in June 2009.

Parks, Recreation and Cultural Resources Commission:

Appoint Freddie Cacao (current Alternate No. 1) as a regular member to a term that expires in June 2010.

Appoint Vishnu Mathur (current Alternate No. 2) as Alternate No. 1 to a term that expires in June 2010.

Sister Cities Commission:

Re-appoint Maria Magdalena Ortega to a term that expires in September 2011.

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

Public Art Committee

- * 4. **Approve Art in Your Park Project for Pinewood Park (Staff Contact: Renee Lorentzen, 586-3231)**

Background:

Milpitas Alliance for the Arts and the City of Milpitas Public Art Committee presented three art model choices for the “Art in Your Park” Project at Pinewood Park in Milpitas: 1) Listen to the Pines, 2) Bountiful Arch and 3) Green Tree. The models were presented to the community at Commission meetings, service group meetings, Back to School Night at Zanker Elementary and a neighborhood meeting at Pinewood Park on October 26, 2008. Pinewood Park neighbors, as well as Milpitas community members, were asked to vote for their favorite piece. The neighborhood votes and the community votes were tallied separately to reflect the desire of the Pinewood neighborhood separate from the community as a whole.

The Pinewood neighborhood’s favorite art piece was Green Tree. The Milpitas community members also favored the Green Tree.

Fiscal Impact: None. The FY 2008-09 budget for the Public Arts Fund includes funding for the Art in Your Park Project in the amount of \$10,000.

Recommendation: Receive report, approve the Green Tree art piece for Pinewood Park’s “Art in Your Park” Project and authorize funding for the project in the amount of \$10,000 from the Public Arts Fund FY 2008-09.

Recycling and Source Reduction Advisory Commission

- * 5. **Receive Staff Report on the Recommendation to Restrict Provision of Water by Restaurants and Direct Staff to Provide Targeted Water Conservation Outreach to Restaurants (Staff Contact: Kathleen Phalen, 586-3345)**

Background: At the October 7, 2008 meeting, the City Council directed staff to prepare a report responding to the Recycling and Source Reduction Advisory Commission's (RSRAC) recommendation that the City consider restricting restaurants from serving water unless requested by a customer. RSRAC offered this recommendation in the interests of supporting water conservation.

Milpitas Municipal Code Section VIII-6.3 does prohibit restaurants from providing water to customers unless it is requested. This is one of several water use restrictions in the City code intended to conserve water. This code restriction is incorporated into the City's 2005 Urban Water Management Plan (UWMP), adopted by the City Council on December 6, 2005. The UWMP is the City's comprehensive water management plan covering all aspects of water supply including the City's water service areas, water use projections by customer class, supply and demand, water service reliability and shortage response options, water transfer and exchange opportunities, use of recycled water, and best management practices for water conservation. This UWMP is available on the City's website at www.ci.milpitas.ca.gov/citydept/publicworks/urban_water_management.htm.

Although the municipal code prohibits the automatic provision of water in restaurants, the City does not currently have staff assigned to inspect for violations or enforce compliance. Such an inspection and enforcement program would be costly, as the City has about 300 restaurants. Staff recommends that the City pursue increased voluntary compliance by targeting outreach efforts to restaurant owners. Staff has requested restaurant table signs from the Santa Clara Valley Water District water conservation program to notify customers that water is only served upon request (a picture of this sign is included in the Council packet). The City has about \$5,000 remaining in its water conservation community promotion budget it can use to distribute these signs along with written information. Staff also proposes to add the list of the prohibited water uses and water conservation best management practices to the City's website.

Water supply and water conservation management is a large and complicated subject. Included in the Council packet is a memorandum summarizing some aspects of the current water supply issues and conservation strategies the City plans to follow in the event that future water supplies are restricted. Given that California has experienced two dry winters, it is appropriate to review the City's plans and options now to prepare for possible implementation next spring.

Fiscal Impact: None.

Recommendation: Receive staff report on the Recycling and Source Reduction Advisory Commission's recommendation to restrict provision of water by restaurants and direct staff to provide targeted water conservation outreach to restaurants.

XIV. RESOLUTIONS

- * 6. **Adopt a Resolution Granting Final Acceptance of the Reservoir Evaluation and Upgrade, Project No. 7091, and Authorize Payment to San Jose Water Company for the Gibraltar Reservoir and Pump Station, Project No. 7101 (Staff Contact: Jeff Leung, 586-3326)**

Background: This project provided for upgrading the Gibraltar and Ayer Reservoirs with mixing systems. The work involved installation of pipe manifolds and valve systems inside the reservoirs to improve water mixing and eliminate dead zones that will be susceptible to algae or bacteria growth. During the checking process of the Gibraltar Reservoir for final acceptance, a video inspection indicated there were cracks in the floor. The investigation and potential repair work was originally believed to be warranty work; however, after the reservoir was drained, the cracks were found to be minor, with no potential of developing leaks and most importantly were found not to be related to the work performed by the contractor. San Jose Water Company performed proper draining and water treatment (in accordance with regulatory requirements) of the Gibraltar Reservoir to investigate cracks on the reservoir floor. San Jose Water Company has submitted an invoice in the amount of \$43,247.10 for the labor, equipment, materials, testing, and administrative overhead for the work performed. A staff memorandum with additional

background information is included in the Council packet. Staff verified the invoice as valid and recommends payment.

This project was initially accepted on June 6, 2006 and the warranty period has now been completed. A satisfactory final inspection has been made of the public improvements that include installation of pipes, pipe supports, sampling system, and mixing valves to insure proper circulation of water in the Ayer and Gibraltar reservoirs (to maintain high water quality). Therefore, the Council may grant final acceptance and the contractor's bond may be released.

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

Recommendations:

1. Adopt resolution granting final acceptance of the Reservoir Evaluation and Upgrade, Project No. 7091, and release of the bond for the project.
 2. Authorize City Engineer to execute a purchase order and authorize payment to San Jose Water Company for Gibraltar Reservoir and Pump Station, Project No. 7101 in the amount of \$43,247.10.
- * 7. **Adopt a Resolution Making Findings for Unexpended Development Fees and Review and Accept the Annual Developer Fee Disclosure Information (Staff Contact: Emma Karlen, 586-3145)**

Background: CA Government Code Section 66000 et seq. requires local agencies to provide an accounting of fees charged for development projects. The City has two basic accounting and reporting responsibilities under the Government Code. Section 66001(d) requires that, five years after collecting a development fee subject to this code section and every five years thereafter, the local agency shall make findings with respect to any portion of the fee remaining unexpended, whether committed or uncommitted. If the required findings are not made, the unexpended funds shall be refunded.

Findings must:

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

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

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

1. Brief description of the type of fee in the account;
2. The amount of the fee;
3. The account's beginning and ending balance;
4. The amount of fees collected and the interest earned;
5. A description of improvements on which the funds were expended and the amount expended on each improvement including the percentage of the improvement funded with development fees;

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

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

Status reports (included in the agenda packet) contain a ten-year history from fiscal years 1998-99 through 2007-08 for the Traffic Impact Fee Fund and a five-year history for the Storm Drain Development Fund. The City began to collect Storm Drain fees in FY 03-04; consequently, there is only a five-year history. Reports showed the amount of fees collected each year, interest income, a brief description of the projects funded, the percentage of the projects funded by the developer fees, and the beginning and ending balance of the funds. Reports indicated that at the end of June 30, 2008, the City had approximately \$1.25 million in the Traffic Impact Fee Fund and \$968,000 in the Storm Drain Development Fee Fund. Inter-fund transfers were made to capital projects that are related to the collection of the fees. There have not been any loans made from the accounts. As of June 30, 2008, the City has not refunded any of the developers' fees.

Staff identified a portion of the traffic impact collected from two developers in FY 02-03 amounting to \$105,271 that were not expended after five years. These fees were collected for the purpose of mitigating traffic impacts resulting from each of these developments. Fees remain unexpended due to incomplete funding to finance the project. The City anticipates using the developer fees to widen the intersection at N. Milpitas Blvd. and Dixon Landing Road, which will mitigate the traffic caused by the development and provide additional access. The City will pursue grants and other funding sources to complete the funding for this project. The first phase is to perform a plan study that will be completed in Fiscal Year 2009. Design and construction will follow with the estimated time of completion in Fiscal Year 2013. Total project cost was estimated to be \$400,000. Funding from the developer fees represents about 25% of the total project cost.

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

Recommendation: Adopt a resolution of the City of Milpitas making findings for unexpended development fees and review and accept the annual developer fee disclosure information.

XV. BID AND CONTRACT

- * **8. Approve Plans and Specifications, Authorize the Advertisement for Bids for Highway 237/I-880 Interchange Monument Sign, and Authorize the City Manager to Execute a Freeway Sign Maintenance Agreement and Other Necessary Documents, Project No. 4170 (Staff Contact: Jeff Leung, 586-3326)**

Background: The City of Milpitas has identified in its Streetscape Master Plan the goals and strategies for its gateways and entries. Seven gateway sign locations along freeway I-880, and freeway I-680 were identified as opportunities for gateway statements to create a positive image for the City of Milpitas, adjacent neighbors, and for the surrounding community. Out of these seven locations, Council approved a gateway monument at the Hwy 237/I-880 freeway interchange. Staff proceeded with submitting an application to Caltrans. Caltrans approved the application and included the gateway monument as part of its Gate Monument Demonstration Program. The approval will expire on December 31, 2008 if construction has not started.

Plans and specifications for this project have been completed in accordance with the approved five-year Capital Improvement Program. The project provides for installation of monument sign, landscaping around the sign, an irrigation system for the landscaping, and an electrical service for up-lighting of the sign and power for irrigation controller. Plans and specifications have been sent to Caltrans for an encroachment permit and necessary approvals for construction.

Caltrans requires the execution of a Freeway Sign Maintenance Agreement to identify the work that the City has agreed to perform. The terms of the agreement are in the process of being finalized. Due to the tight expiration date, it is recommended that Council authorize the City Manager to execute a Freeway Sign Maintenance Agreement when the terms are finalized.

The Engineer's Estimate for the work is approximately \$250,000. 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. There are sufficient funds in the project.

Recommendations:

1. Approve plans and specifications for Highway 237/Interstate 880 City monument sign, Project No. 4170.
2. Authorize the advertisement for bids for Highway 237/I880 interchange monument sign.
3. Authorize the City Manager to execute a Freeway Sign Maintenance Agreement and other necessary documents, Project No. 4170.

XVI. ADJOURNMENT

XVII. MILPITAS CONNECTION BOARD OF DIRECTORS MEETING

MC1. Call to Order by the Mayor

MC2. Roll Call

MC3. Appoint Two Directors and Execute Certificate of Dissolution and Certificate of Election to Wind Up and Dissolve and Authorize Necessary Persons to Execute Documents for the Dissolution of The Milpitas Connection, Inc. (Staff Contact: Bronwen Lacey, 586-3043)

Background: The Milpitas Connection, Inc. was formed in 1977 by Council action as a non-profit corporation for the purpose of distributing the Recreation Activities Guide and City Newsletter (Milpitas Connection). It was primarily formed to take advantage of non-profit third-class bulk mailing rates to mail the recreation newsletter.

In 1991, the Postmaster informed the City that the Milpitas Connection, Inc. no longer qualified as an educational organization and the bulk mailing permit was revoked. Since the original purpose for forming a corporation no longer exists, staff is recommending that the Milpitas Connection, Inc. be dissolved. To achieve this, a Certificate of Dissolution and Certificate of Election to Wind Up and Dissolve, approved and signed by all directors, must be filed with the Secretary of State.

Fiscal Impact: None

Recommendations:

1. Appoint Thomas Williams, City Manager, and Emma Karlen, Finance Director, as directors.
2. Execute the Certificate of Dissolution and Certificate of Election to Wind Up and Dissolve to dissolve the Milpitas Connection, Inc. as a corporation.
3. Authorize the necessary persons to execute the necessary documents to dissolve the Milpitas Connection, Inc.

MC4. Adjournment

**NEXT REGULAR MEETING
TUESDAY, NOVEMBER 18, 2008**