



MILPITAS CITY COUNCIL AND REDEVELOPMENT AGENCY
MEETING AGENDA
TUESDAY, MAY 17, 2011

6:30 P.M. (CLOSED SESSION) • 7:00 P.M. (PUBLIC BUSINESS)

SUMMARY OF CONTENTS

- I. **CALL TO ORDER/ROLL CALL by the Mayor (6:30 p.m.)**
 - II. **ADJOURN TO CLOSED SESSION OF CITY COUNCIL**

CONFERENCE WITH LABOR NEGOTIATORS - COLLECTIVE BARGAINING
Pursuant to CA Government Code §54957.6 City Negotiators: Carmen Valdez and Bill Marion
Employee Group: Mid-Management/Confidential (UPEC), 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**
 - V. **INVOCATION** (Mayor Esteves)
 - VI. **APPROVAL OF COUNCIL MEETING MINUTES – May 3, 2011**
 - VII. **SCHEDULE OF MEETINGS – Council Calendars for May and June 2011**
 - VIII. **PRESENTATIONS**
 - Proclaim *Public Works Week*, May 15-21, 2011
 - Proclaim *Older Americans Month – May 2011*
 - Present Certificates of Appreciation to Eleven Businesses that donated to the April 6, 2011
Disaster Drill at Randall School
 - IX. **PUBLIC FORUM**
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- X. **ANNOUNCEMENTS**
 - XI. **ANNOUNCEMENT OF CONFLICT OF INTEREST**
 - XII. **APPROVAL OF AGENDA**
 - XIII. **CONSENT CALENDAR** (Items with asterisk*)

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.

Consent calendar items are considered to be routine and will be considered for adoption by one motion. There will be no separate discussion of these items unless a member of the City Council, member of the audience, or staff requests the Council to remove an item from or be added to the consent calendar. Any person desiring to speak on any item on the consent calendar should ask to have that item removed from the consent calendar. If removed, this item will be discussed in the order in which it appears on the agenda.

XIV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

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

RA2. Approval of Minutes – May 3, 2011

RA3. Approval of Agenda/Consent Calendar (Items with asterisk*)

***RA4. Award a Construction Contract to Hometown Construction, Inc. for Community Center Heating, Ventilation, and Air Conditioning (HVAC) Replacement, Project No. 8182 (Staff Contact: Steve Erickson, 586-3301)**

RA5. Agency Adjournment

XV. REPORTS OF MAYOR, COMMISSION AND SUBCOMMITTEE

*** 1. Consider Mayor’s Recommendations for Appointments/Re-Appointment to Two Milpitas Commissions (Contact: Mayor Esteves, 586-3051)**

*** 2. Approve Support Letter for Senate Bill 568 Restricting the Use of Polystyrene Food Containers (Staff Contact: Kathleen Phalen, 586-3345)**

*** 3. Approve Comment Letter on the Altamont Corridor Rail Project Alternatives Analysis Report (Staff Contact: James Lindsay, 586-3273)**

XVI. NEW BUSINESS

4. Receive the Monthly Economic Development Report (Staff Contact: Diana Barnhart, 586-3059)

*** 5. Approve a Lease Agreement with Milpitas Food Pantry for 1440 South Main Street (Staff Contact: Diana Barnhart, 586-3059)**

6. Consider Initiation of an Unincorporated Island Annexation (Staff Contact: James Lindsay, 586-3273)

*** 7. Accept the Santa Clara County Health Department “Communities Putting Prevention to Work” (CPPW) Grant (Staff Contact: Charlotte Pang, 586-2432)**

XVII. ORDINANCES

8. Introduce Ordinance No. 65.141 Amending Chapter 1 of Title II of the Milpitas Municipal Code Relating to Building Code Enforcement (Staff Contact: Bronwen Lacey, 586-3043)

*** 9. Waive the Second Reading and Adopt Ordinance No. 38.793 Modifying Regulations for Non-Conforming Uses (Staff Contact: James Lindsay, 586-3273)**

*** 10. Waive the Second Reading and Adopt Ordinance No. 239.6, Amending Title XI, Chapter 16 of the Milpitas Municipal Code Relating to Prohibition of Copper-Contaminated Discharges into Storm Drains (Staff Contact: Kathleen Phalen, 586-3345)**

XVIII. RESOLUTIONS

*** 11. Adopt a Resolution of Intention to Levy Assessment for Fiscal Year 2011-2012, Approving the Preliminary Annual Engineer’s Report and Providing for Notice of Public Hearing for Landscaping and Lighting Maintenance Assessment District No. 95-1, McCarthy Ranch (Staff Contact: Fernando Bravo, 586-3328)**

- * 12. **Adopt a Resolution of Intention to Levy Assessment for Fiscal Year 2011-12, Approving the Preliminary Annual Engineer's Report and Providing for Notice of Public Hearing for Landscaping and Lighting Maintenance Assessment District No. 98-1, Sinclair Horizon (Staff Contact: Fernando Bravo, 586-3328)**
- * 13. **Adopt a Resolution Granting Conditional Final Acceptance of the KB Home Terra Serena Development, Project No. 3160 (Staff Contact: Fernando Bravo, 586-3328)**
- * 14. **Adopt a Resolution Authorizing the City Manager to Execute an Agreement with the County of Santa Clara for the Distribution of 2010 Emergency Management Performance Grant Funds (Staff Contact: Sean Simonson, 586-2810)**

XIX. BIDS AND CONTRACTS

- * 15. **Approve Plans and Specifications and Authorize Advertisement for Bid Proposals for Street Slurry Seal 2011, Project No. 4255 (Staff Contact: Steve Chan, 586-3324)**
- * 16. **Waive Minor Bid Irregularity and Award a Construction Contract to Preston Pipelines Inc. Including One Add Alternate Bid Item, and Approve Amendment No. 3 to the Agreement with West Yost Associates for South Milpitas Boulevard Water Line and Los Coches Valve Replacement, Project No. 7098 (Staff Contact: Steve Erickson, 586-3301)**
- 17. **Approve and Authorize the City Manager to Execute a Solar Power Purchase Agreement with Ecoplexus, Inc. (Staff Contact: Greg Armendariz, 586-3317)**
- * 18. **Approve Amendment No. 1 to the Subdivision Improvement Agreement for Fairfield Murphy Ranch, Project No. 3170 (Staff Contact: Fernando Bravo, 586-3328)**

XX. ADJOURNMENT

**NEXT REGULAR COUNCIL MEETING:
TUESDAY, JUNE 7, 2011**

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 City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035
e-mail: mogaz@ci.milpitas.ca.gov / Fax: 408-586-3056 / Phone: 408-586-3040

The Open Government Ordinance is codified in the Milpitas Municipal Code as Title I Chapter 310 and is available online at the City's website www.ci.milpitas.ca.gov by selecting the Milpitas Municipal Code link.

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.

APPLY TO BECOME A CITY COMMISSIONER!

Current vacancies exist for the:

*Arts Commission/Public Art Committee
Community Advisory Commission (alternate)
Emergency Preparedness Commission (large industry rep.)
Mobile Home Park Rental Review Board
Senior Advisory Commission
Veterans 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

XIV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

- *RA4. Award a Construction Contract to Hometown Construction, Inc. for Community Center Heating, Ventilation, and Air Conditioning (HVAC) Replacement, Project No. 8182 (Staff Contact: Steve Erickson, 586-3301)**

Background: On March 15, 2011, the Agency and the City Council approved the project plans and specifications and authorized the advertisement for construction bid proposals for the Community Center HVAC replacement project. This project provides for the installation of seven new HVAC units, related controls, duct work and minor roof modifications required for installation of the new roof mounted equipment. The Engineer's Estimate for the base bid project work was \$400,000.

The project was advertised and five sealed bid proposals were received on April 28, 2011. Bid proposals ranged from \$404,906 to \$557,800. The lowest responsible bid was submitted by Hometown Construction, Inc. in the amount of \$404,906, which is within 1.2% of the Engineer's Estimate. Staff has analyzed all the bids and finds the low bid to be reasonable. The bid pricings include consideration of a short 75-day contract period, the need to work within an occupied building, phased construction, and the coordination with the buildings rental schedule. The contractor is also required to provide temporary heating and cooling units for the comfort of staff and those renting the facilities. Staff recommends award of this construction contract to Hometown Construction, Inc. for the Community Center Heating Ventilation, and Air Condition (HVAC) replacement.

Staff is requesting the use of the same change order policy that was approved for the successful completion of the Senior Center, Library, Parking Garage, and other recently completed projects with tight completion schedules and budgets. This policy allows for the timely completion of the project, by authorizing staff to execute change orders to address the need to respond swiftly to construction conditions in order to limit potential claims, delays, or risk to the City. The construction contingency for change orders established for this project is \$60,000, and the requested staff change order authority would not exceed this amount.

Fiscal Impact: None. Sufficient funds are available in the project budget.

Recommendations:

1. Award a construction contract to Hometown Construction, Inc. for Community Center HVAC replacement, Project No. 8182, in the amount of \$404,906.
2. Authorize staff to execute change orders for the Community Center HVAC replacement project, provided that the change orders do not exceed the established construction contingency amount of \$60,000 for the project.

RA5. Agency Adjournment

XVI. REPORTS OF MAYOR, COMMISSION AND SUBCOMMITTEE

- * 1. Consider Mayor's Recommendations for Appointments/Re-Appointment to Two Milpitas Commissions (Contact: Mayor Esteves, 586-3051)**

Background: Mayor Esteves recommends the following citizens be appointed/re-appointed to two Milpitas Commissions as follows:

Economic Development Commission:

Re-appoint Dhaval Brahmhatt a term that expires in April 2014.

Senior Advisory Commission

Appoint Melba Holliday (current Alternate No. 1) as a regular member to a term that expires in December 2012.

Appoint Richard "Lee" Verna (current Alternate No. 2) as Alternate No. 1 to a term that expires in December 2011.

Newly appoint Deborah R. Langley as Alternate No. 2 to a term that expires in December 2012.

Recommendation: Consider the recommendations from Mayor Esteves, and move to approve four appointments to two Milpitas Commissions.

* 2. **Approve Support Letter for Senate Bill 568 Restricting the Use of Polystyrene Food Containers (Staff Contact: Kathleen Phalen, 586-3345)**

Background: On September 21, 2010, the City Council referred the evaluation of a potential ban on expanded polystyrene (EPS, also known as Styrofoam™) food containers to the Recycling and Source Reduction Advisory Commission and directed staff to seek consultant proposals to study the potential product ban. At its April 26, 2011 meeting, the Commission reviewed study results and the proposed California State Senate Bill 568 (Lowenthal), which was introduced on February 17, 2011. The Commission unanimously recommends that the City Council support SB 568 which would prohibit food vendors, on or after January 1, 2014, from dispensing prepared food to customers in an EPS food container. An EPS food container includes, but is not limited to, a cup, bowl, plate, tray, or clamshell that is intended for single use. The Commission opted to wait for state action on SB 568 before addressing the issue locally. The draft letter recommended by the Commission is included in the Council agenda packet, along with the SB 568 text for reference.

Fiscal Impact: None.

Recommendation: Approve the letter of support for Senate Bill 568 to Senators Lowenthal, Corbett and Alquist for restriction of polystyrene food containers.

* 3. **Approve Comment Letter on the Altamont Corridor Rail Project Alternatives Analysis Report (Staff Contact: James Lindsay, 586-3273)**

Background: The California High Speed Rail Authority and the Federal Railroad Administration are studying alignment options for a proposed high-speed commuter rail corridor between Stockton and San Jose known as the Altamont Corridor Rail Project. This project is in addition to the more widely known proposal to construct high-speed rail between San Francisco and Los Angeles. The alignment options being considered for the Altamont Corridor have been published in the Preliminary Alternative Analysis Report. This report, once finalized, will be used to describe the Altamont project within an Environmental Impact Report/Statement (EIR/EIS) due out in the next two years.

The Preliminary Alternative Analysis Report shows three alternative alignments through Milpitas: one along the Union Pacific rail corridor and two along the I-880 freeway corridor. All three alternatives are shown as aerial tracks similar to the elevated light-rail tracks along Great Mall Parkway and Capitol Avenue. The Transportation and Land Use Subcommittee reviewed the alternatives and a draft letter stating City opposition to the aerial tracks running through the City and recommends the City Council approve the letter.

Fiscal Impact: None.

Recommendation: Approve the comment letter on the Altamont Corridor Rail Project Alternatives Analysis Report opposing the aerial high-speed rail track alignment options through Milpitas.

XVI. NEW BUSINESS

4. Receive the Monthly Economic Development Report (Staff Contact: Diana Barnhart, 586-3059)

Background: Redevelopment: The State Legislature has not had further action on the proposals to dissolve redevelopment agencies. Legislation has been introduced to amend the affordable housing regulations and is aimed to 1) eliminate misuse of housing set aside funds and 2) require agencies that have not expended housing set aside funds to do so. Analysis of the proposed legislation indicates that it will not have a dramatic impact on the City's ability to utilize housing set aside funds.

Property Management: Much of April was focused on renewing leases for the tenants located at 1432 to 1444 South Main Street and negotiating the property management contract with the former owners and proposed new tenants.

Freeway Signs: Both the McCarthy Ranch/Clear Channel and Milpitas Automotive/CBS Outdoor freeway sign negotiations are moving forward. The McCarthy Ranch signs' EIR is fully underway. Lease negotiations with Milpitas Automotive Partners for a sign at I-880 at Montague are progressing with the likelihood that all issues between the Great Mall ownership and the City will be resolved as part of the lease agreement.

Fiscal Impact: None. There is no fiscal impact associated with this action.

Recommendation: Receive the monthly economic development report from the Economic Development Manager.

*** 5. Approve a Lease Agreement with Milpitas Food Pantry for 1440 South Main Street (Staff Contact: Diana Barnhart, 586-3059)**

Background: Milpitas Food Pantry is located at 95 South Main Street and was recently given notice to vacate by the current property owner. City staff was directed to work with the Food Pantry to assist in finding a new location. With the City's purchase of 1440 South Main Street, the prior owner vacated one of the buildings and moved into a smaller office. This created a 1,600 square foot vacancy that can be secured by fencing from the rest of the tenants. The Food Pantry director has toured the site several times and believes it is suitable for their services and accessible by their clients. There is adequate parking to serve the Food Pantry needs in the secured area.

Average rents in this part of South Main Street range from \$0.60 per square foot (psf) to \$1.50 psf. Staff recommends that the Food Pantry be charged \$1.00 psf for 1440 South Main Street location. The agency would also have use of the storage shed and two vacated bays that the previous tenant used for storage. The Food Pantry, as all the tenants on the site, will pay for utilities, except water and garbage, which the City will pay. Lease proceeds will adequately cover the cost of the utilities and any maintenance that may occur on the site.

If approved by the City Council, the lease will run from June 1, 2011 to June 30, 2013. All leases on the site expire in 2013 as the property was purchased for long term redevelopment efforts.

Fiscal Impact: The City will receive \$1,600 for FY 2010-11 and \$19,200 for FY 2011-12 in lease payments.

Recommendation: Approve the lease agreement with Milpitas Food Pantry for two years starting June 1, 2011.

6. Consider Initiation of an Unincorporated Island Annexation (Staff Contact: James Lindsay, 586-3273)

Background: The item was requested by the Mayor at the last City Council meeting on May 3. The Local Agency Formation Commission of Santa Clara County (LAFCO) and the County of Santa Clara are jointly encouraging cities to annex unincorporated islands that qualify for the streamlined annexation process currently available under state law. The only unincorporated island within Milpitas' Urban Service Area is a 0.84 acre residential property located at 661 Piedmont Road. With direction from the City Council, staff can begin the process which includes notifying the property owner and scheduling a public hearing with a 21-day notice to initiate the annexation. A process flow chart from LAFCO has been included in the agenda packet.

Fiscal Impact: None.

Recommendation: Direct staff to take the necessary steps to initiate the unincorporated island annexation.

*** 7. Accept the Santa Clara County Health Department "Communities Putting Prevention to Work" (CPPW) Grant (Staff Contact: Charlotte Pang, 586-2432)**

Background: The Santa Clara County Health Department was awarded a \$6.9 million, two year grant through the Communities Putting Prevention to Work (CPPW) program to address tobacco use and exposure to second-hand smoke.

The Public Health Department has made \$450,000 available to cities in the county to participate in this effort of tobacco prevention. Each city is eligible for a base award of \$15,000 and an additional amount based on population. All activities must be completed by March 2, 2012. The Police Department submitted the grant application outlining two objectives: 1) amend the current ordinance to strengthen no smoking provisions in certain public places, and 2) direct enforcement involving decoy youth surveys and sting operations.

The Police Department was notified the application has been accepted and approved for the City to receive \$53,138.

Fiscal Impact: None. The grant will cover all costs incurred for tobacco prevention efforts.

Recommendations:

1. Accept the Santa Clara County Health Department "Communities Putting Prevention to Work" Grant in the amount of \$53,138 and authorize the City Manager to execute a contract with the County for the grant.
2. Approve a budget appropriation in the amount of \$21,777 for the Police Department overtime budget and \$9,380 for the Police Department supplies budget from grant revenue.

XVII. ORDINANCES

8. Introduce Ordinance No. 65.141 Amending Chapter 1 of Title II of the Milpitas Municipal Code Relating to Building Code Enforcement (Staff Contact: Bronwen Lacey, 586-3043)

Background: In January of 2010, the City Attorney's Office brought various Municipal Code clean-up changes that required nothing more than deletion of antiquated or unused sections of the Code. The City Attorney then mentioned he would bring back proposed Code changes that required more than simple deletions before the end of Fiscal Year 2010-11. The proposed ordinance is the first of these changes for Council approval in what will be an ongoing effort at updating the Municipal Code.

Currently, the Building Code contains no penalty provision to discourage property owners from continuing to violate the Municipal Code with the City incurring multiple costs to obtain compliance with the same property owners on multiple occasions. The proposed amendment uses the same language in Title V, Chapter 300 of the Fire Code which will now permit the City to recover civil penalties from property owners violating the Building Code.

Fiscal Impact: By authorizing civil penalties in Title II, Building Regulations, the City may recover penalties to cover Code enforcement costs.

Recommendations:

1. Waive the first reading beyond the title of Ordinance No. 65.141.
2. Introduce Ordinance No. 65.141 relating to Building Code Enforcement.

- * **9. Waive the Second Reading and Adopt Ordinance No. 38.793 Modifying Regulations for Non-Conforming Uses (Staff Contact: James Lindsay, 586-3273)**

Background: On May 3, 2012, the City Council introduced Ordinance No. 38.793 modifying regulations for non-conforming uses which is now ready for adoption.

Fiscal Impact: None.

Recommendations:

1. Waive the second reading of Ordinance No. 38.793.
2. Adopt Ordinance No. 38.793 modifying regulations for non-conforming uses.

- * **10. Waive the Second Reading and Adopt Ordinance No. 239.6, Amending Title XI, Chapter 16 of the Milpitas Municipal Code Relating to Prohibition of Copper-Contaminated Discharges into Storm Drains (Staff Contact: Kathleen Phalen, 586-3345)**

Background: Provision C.13.b of the San Francisco Bay Region Municipal Regional Stormwater NPDES Permit (Permit No. CAS612008) requires the City to certify that by June 30, 2011 it has legal authority to prohibit copper-contaminated discharges to the storm drain system from the installation, cleaning, treating, and/or washing of copper architectural features, including copper roofs, and from the wastewaters from pools, spas, and fountains. On May 3, 2011, the City Council introduced Ordinance No. 239.6 to amend the Milpitas Municipal Code to provide the City the necessary legal authority to prohibit these discharges. No changes have been made to the ordinance since the first reading.

Fiscal Impact: None.

Recommendations:

1. Waive the second reading of Ordinance No. 239.6.
2. Adopt Ordinance No. 239.6, amending Title XI, Chapter 16, of the Milpitas Municipal Code relating to prohibiting copper-contaminated discharges into storm drains.

XVIII. RESOLUTIONS

- * **11. Adopt a Resolution of Intention to Levy Assessment for Fiscal Year 2011-2012, Approving the Preliminary Annual Engineer's Report and Providing for Notice of Public Hearing for Landscaping and Lighting Maintenance Assessment District No. 95-1, McCarthy Ranch (Staff Contact: Fernando Bravo, 586-3328)**

Background: Landscaping and Lighting Maintenance Assessment District (LLMD) No. 95-1 provides for servicing and maintaining the public landscaping and additional lighting along North McCarthy Boulevard and Ranch Drive Gateway Improvements. On May 3, 2011, the City Council directed the City Engineer to prepare an annual engineer's report for LLMD No. 95-1. This report has been prepared and is available for review at the City Clerk's office. Staff requests

that the Council preliminarily approve the Annual Report and set the date of June 21, 2011 for a public hearing. Upon conclusion of the public hearing, and subsequent City Council approval of the Annual Engineer's Report, the assessment for the work will be added to the tax bills for those property owners included within the boundaries of the District.

Fiscal Impact: None.

Recommendation: Adopt a resolution preliminarily approving the Annual Engineer's Report and providing for the notice of public hearing on June 21, 2011 for LLMD No. 95-1.

- * 12. **Adopt a Resolution of Intention to Levy Assessment for Fiscal Year 2011-12, Approving the Preliminary Annual Engineer's Report and Providing for Notice of Public Hearing for Landscaping and Lighting Maintenance Assessment District No. 98-1, Sinclair Horizon (Staff Contact: Fernando Bravo, 586-3328)**

Background: Landscaping and Lighting Maintenance Assessment District (LLMD) No. 98-1 provides for servicing and maintaining the public landscaping along Sinclair Frontage Road, Los Coches and Berryessa Creeks abutting the Sinclair Horizon residential subdivision. On May 3, 2011, the City Council directed the City Engineer to prepare an annual engineer's report for LLMD No. 98-1. This report has been prepared and is available for review at the City Clerk's office. Staff requests that the Council preliminarily approve the Annual Report and set the date of June 21, 2011 for a public hearing. Upon conclusion of the public hearing, and subsequent City Council approval of the Annual Engineer's Report, the assessment for the work will be added to the tax bills for those property owners included within the boundaries of the District.

Fiscal Impact: None.

Recommendation: Adopt a resolution preliminarily approving the Annual Engineer's Report and providing for the notice of public hearing on June 21, 2011 for LLMD No. 98-1.

- * 13. **Adopt a Resolution Granting Conditional Final Acceptance of the KB Home Terra Serena Development, Project No. 3160 (Staff Contact: Fernando Bravo, 586-3328)**

Background: The last phase of the project was initially accepted on September 1, 2009 and most of the work has passed the warranty period. The project provided public improvements consisting of water, sewer, storm drain, and street for the tracts and Abel Street improvements, public parks and sewer truck relocation. A final inspection of the installed public improvements has been made, and they were found to be satisfactory with the exception of the sewer work at the intersection of Abel St and Curtis Ave and sidewalk and irrigation work at Abel Street next to Penitencia Creek.

Staff recommends that the Council grant final project acceptance of the satisfactory work for KB Home Project, Project No. 3160, and release of those bonds as follows:

Plan #	Work Description	Bond #	Action
2-1047	Abel Street	SU5017237	Do not release unsatisfactory work
2-1035	Thompson St/Ct & Machado Ave	SU5017238	Release
2-1048	Tract 9698	SU5017239	Release
2-1034	Alvarez Court	SU5017240	Release
2-1051	Hetch Hetchy Park	SU5017241	Release
2-1050	Elm Park	SU5017242	Release
2-1033	Sewer trunk relocation	SU5017243	Release
Tract Maps	Survey Monumentation	SU5017244	Release

Staff is currently working with the Santa Clara Valley Water District and KB Homes in resolving unsatisfactory work.

Fiscal Impact: None.

Recommendation: Adopt a resolution granting conditional final acceptance of the KB Home Terra Serena Project No. 3160 and release of the noted bonds.

- * 14. **Adopt a Resolution Authorizing the City Manager to Execute an Agreement with the County of Santa Clara for the Distribution of 2010 Emergency Management Performance Grant Funds (Staff Contact: Sean Simonson, 586-2810)**

Background: The Fiscal Year 2010 Emergency Management Performance Grant funds are offered by the Governor's Office of Emergency Services for the purposes of emergency management planning. A portion of these funds are allocated from the County of Santa Clara to the City of Milpitas to implement emergency management programs under the EMPG 2010 guidelines.

Fiscal Impact: The grant funds of \$10,800 distributed through this agreement will augment emergency management training cost for Milpitas OES and provide technological equipment for the Emergency Operations Center.

Recommendation: Adopt a resolution authorizing the City Manager to execute the agreement with the County of Santa Clara for the distribution of 2010 Emergency Management Performance Grant funds.

XIX. BIDS AND CONTRACTS

- * 15. **Approve Plans and Specifications and Authorize Advertisement for Bid Proposals for Street Slurry Seal 2011, Project No. 4255 (Staff Contact: Steve Chan, 586-3324)**

Background: Staff completed the plans and specifications for the Street Slurry Seal 2011, Project No. 4255. The project will provide a rubberized slurry seal and new pavement markings on eleven streets throughout the City. The slurry seal coat will rejuvenate the asphalt pavement and will provide a new wearing surface to the streets. Streets included in this seal project are:

- Bryce Court
- Zion Court
- Sequoia Drive - Yosemite Drive to Yosemite Avenue
- Shenandoah Avenue
- Big Bend Drive
- Crater Lake Avenue
- Everglades Drive
- Mt. Rainier Avenue
- Grand Teton Drive
- Uridias Ranch Road
- Aguilar Court

The Engineer's Estimate for the project is \$600,000. A copy of the plan title sheet is included in the Council's agenda packet, and the complete set of plans and specifications are available for review in the office of the City Engineer.

Fiscal Impact: None. Sufficient funds are available in the project budget for these services.

Recommendations:

1. Approve the plans and specifications for Project No. 4255.
2. Authorize the advertisement for bid proposals.

* 16. **Waive Minor Bid Irregularity and Award a Construction Contract to Preston Pipelines Inc. Including One Add Alternate Bid Item, and Approve Amendment No. 3 to the Agreement with West Yost Associates for South Milpitas Boulevard Water Line and Los Coches Valve Replacement, Project No. 7098 (Staff Contact: Steve Erickson, 586-3301)**

Background: On May 5, 2009, the City Council approved the plans and specifications, and authorized staff to advertise and receive bid proposals for a project that will replace approximately 4,800 linear feet of 16-inch diameter water main and service laterals in South Milpitas Boulevard. This aging water line is considered a significant water system “backbone” structure in providing water service for the City. The replacement and upgrade of this pipeline is also an element of the City’s Water System Seismic Improvement Strategic Plan. The replacement work will include the installation of flexible pipe joints, ductile iron pipe, high-line risers, and additional isolation valves designed to help this important water system lifeline better survive a large earthquake. Construction work will be along South Milpitas from Calaveras Boulevard to Yosemite Drive, and will include portions of Los Coches Street.

The Engineer’s Estimate for the work is \$2,200,000. The project was advertised and sealed bid proposals were opened on May 10, 2011. Four bid proposals were received, and base bid prices ranged from \$2,477,810 to \$3,400,173. The apparent responsible bidder is Preston Pipelines Inc. with the lowest base bid of \$2,477,810. The low bid is approximately 12.5% higher than the Engineer’s Estimate. The higher than anticipated bid pricing is most likely due to several factors including the continued spikes in oil prices which affect material costs, and the short 140 working day duration of the project. Several other agencies including Union Sanitary District, Alameda County Water District, and the San Francisco Public Utilities Commission all have large pipeline projects bidding this week, so contractors are apparently busy which would explain the low turn out. It is not believed that rejection of all bids, and the re-advertisement for a new bid opening would yield any significant differences in the bid pricing.

Preston Pipeline’s bid package included a minor bid irregularity in that the described price in words for the “Mobilization” bid item is less than what was reported in figures. This reduces Preston’s base bid price by \$27,000, or from \$2,477,810 to \$2,450,510. This irregularity does not change the outcome of which one is the low bidder. This City’s bid documents require that in case of inconsistency or conflict between words and figures submitted by the bidder, the words shall govern. Therefore, Preston’s actual final base bid price shall reflect what is stated in words. Preston Pipelines has submitted a letter to the City agreeing to honor its bid with the error reducing the price of the Mobilization item. The Public Contract Code and the City’s bid documents define this type of error as a “minor bid irregularity,” and authorize the City to “waive” this irregularity and proceed with award of the contract. Project staff and the City Attorney’s Office reviewed this bid irregularity and determined that it is minor and not significant, and recommends the Council waive the minor irregularity and award the construction contract to Preston Pipelines Inc.

The bid package also included one Add Alternate item for consideration of submitted pricing after bid opening. Staff recommends awarding the contract with this item for a not to exceed price of \$9,275. The Add Alternate item will provide for seven cathodic protection systems on water valves installed on Los Coches Street to reduce corrosion and deterioration of the valves. Awarding the project base bid with the recommended alternate item brings the total construction contract to \$2,460,085, and this is within the project’s cost plan and budget.

Staff also recommends approval of Amendment No. 3 to the Design Services contract with West Yost. Amendment No. 3 will authorize West Yost to obtain agency permits; provide additional engineering services as required, and to provide construction support services to assist City staff during project construction. Staff negotiated a not-to-exceed contract amount of \$67,751, which is considered reasonable for the services.

Staff is requesting the use of the same change order policy that was approved for the successful completion of the senior center, library, parking garage, and other recently completed projects with tight completion schedules and budgets. This policy allows for the timely completion of the project, by authorizing staff to execute change orders to address the need to respond swiftly to construction conditions in order to limit potential claims, delays, or risks to the City. The construction contingency for change orders established for this project \$200,000, and the requested staff change order authority would not exceed this amount, and would not require additional appropriation.

Fiscal Impact: None. Sufficient funds are available in the project budget to amend the West Yost Associates agreement and award a construction contract for this project.

Recommendations:

1. Waive Minor Bid Irregularity.
2. Award a construction contract including one add alternate item to Preston Pipelines for the South Milpitas Boulevard Water Line and Los Coches Valve Replacement, Project No. 7098.
3. Approve Amendment No. 3 to the Agreement with West Yost Associates for a not-to-exceed amount of \$67,751.00, for the South Milpitas Boulevard Water Line Replacement and Los Coches Valve Replacement, Project No. 7098.
4. Authorize staff to execute change orders for the South Milpitas Boulevard Water Line and Los Coches Valve Replacement, Project No. 7098, provided that the change orders do not exceed the established construction contingency amount for the project, and do not require additional appropriation.

17. Approve and Authorize the City Manager to Execute a Solar Power Purchase Agreement with Ecoplexus, Inc. (Staff Contact: Greg Armendariz, 586-3317)

Background: Solar energy facility installations became financially feasible to public agencies, through the California Solar Initiative grant program, combined with Power Purchase Agreements. A Power Purchase Agreement (PPA) financing model is a “third party” ownership model, which requires a separate, taxable entity (Solar power seller) to provide financing, design, construction, installation, operations and maintenance of solar power panels on public agency (solar power buyer) facilities. The public agency enters into a long-term contract (PPA) to purchase 100% of the electricity generated by the solar system.

On February 16, 2010, the City Council elected to participate in a nine agency collaborative, by executing an agreement with the County of Santa Clara, as the lead agency, for the purpose of pursuing the purchase of solar power. The County and all the participating cities would commit to purchasing electric power, generated from third party solar power panel installations, at competitive fixed pricing over a 20-year period. The County then issued a Request for Proposals (RFP) seeking solar power purchase providers and selected the most qualified proposers. As of April 30, 2011, the County, Town of Los Gatos and Valley Transportation Authority (VTA) have already approved PPA contracts under this arrangement.

The County RFP grouped the various facilities from all agencies into large, medium and small solar installation packages. Milpitas submitted sixteen facilities as potential solar panel installation sites, which were included under the medium and small installation categories. Two firms - Borrego Solar and Ecoplexus respectively - were selected for these categories. On December 7, 2010, the City Council authorized the City Manager to execute an agreement with Borrego Solar, however Borrego Solar and the City were not able to reach agreement on the final financial negotiation terms. Borrego Solar and the City have now concluded these negotiations. Ecoplexus, Inc. in the meantime, has completed its site engineering, construction cost estimating and resulting financial analysis. These financial results were found to be reasonable and staff also requested Ecoplexus to similarly evaluate the sites previously assigned to Borrego Solar.

Staff is currently negotiating the final cost terms of a solar power purchase agreement with Ecoplexus, Inc. These negotiations will be concluded after the deadline for this council agenda report. Staff will provide the results of the final cost terms at the Council meeting.

In order for the City to meet the California Solar Initiative grant deadline of May 19, 2011, staff recommends that the Council authorize the City Manager to execute a Power Purchase Agreement with Ecoplexus, Inc., with the understanding that as many of the City facilities listed below will be included as long as they are financially advantageous to the City. A copy of the Power Purchase Agreement is included in the Council agenda packets, and the following is a summary of some of the contract provisions:

- Effective Solar Power purchase rates are equal to or less than PG&E electric rates;
- Solar Power purchase rate increases are capped at 3 % annually (PG&E rates have averaged annual increases in excess of 6%);
- Minimum solar power production is guaranteed at 80% of the design production through out the life of the panels (which assures the City that the system will be properly maintained and operated by Ecoplexus, Inc);
- City to retain the renewal energy credits (RECs);
- Buy-out provisions allow City to purchase system at fair market value (after 10 years);
- Excess energy production – City has option to purchase additional energy;
- Termination for cause and convenience are provided to the City – which include
 - prior to commercial operation if Seller is unable to obtain financing or if City cannot switch PG&E rate schedule for remaining PG&E power purchases,
 - Force Majeure – if a either party is unable to perform under the agreement for 180 days, other party may terminate;
 - After 10 years, City may terminate without cause and pay termination fee as liquidated damages,
- Assurance that Solar provider shall remove all equipment at end of term (either early termination or full term);

The Power Purchase Agreement includes the following City of Milpitas facilities:

1. Milpitas Library Garage
2. Gibraltar Water Pump Station

The following sites are under negotiation and the conclusion of those negotiations will be reported at the Council meeting:

1. Main Sewage Pump Station and Corp Yard
2. New Senior Center
3. Community Center
4. Milpitas Sports Center

Fiscal Impact: None. The Power Purchase Agreement will provide the City with electric energy cost savings in excess of \$3.5 million for all of the above sites, over the 20-year term.

Recommendation: Approve and authorize the City Manager to execute a Solar Power Purchase Agreement with Ecoplexus, Inc., subject to approval as to form by the City Attorney.

*** 18. Approve Amendment No. 1 to the Subdivision Improvement Agreement for Fairfield Murphy Ranch, Project No. 3170 (Staff Contact: Fernando Bravo, 586-3328)**

Background: On August 18, 2009, City Council approved the Subdivision Improvement Agreement (SIA) for the Fairfield Murphy Ranch Project with 659 residential units (374 apartment units and 285 townhome units) off Murphy Ranch Road between Technology Drive and Sandisk Drive. The project includes a public park off Murphy Ranch Road, trail head access to Coyote Creek, Bellew Storm Pump Station retrofit, frontage improvements and new landscaped median islands on Murphy Ranch Road.

The project is currently under construction. The developer is in the process of selling the townhomes project to the Lyons Development Group and has requested to de-link current Fairfield obligations to not be tied to the Townhome product for the project. This request merely clarifies respective developer obligations as to each phase of the project, while ensuring that all required public improvement will be constructed.

Additionally, recent construction timelines and priorities have necessitated the proposed SIA Amendment No. 1 which include the following and are more specifically defined in the Amendment No. 1 (copy in the agenda packet):

- a. Storm Drain Bypass Line
- b. Bellew Pump Stations
- c. Coyote Creek Trail Access
- d. Townhome Development

Fiscal Impact: None.

Recommendation: Approve Amendment No. 1 to the Subdivision Improvement Agreement for Fairfield Murphy Ranch, subject to approval as to form by the City Attorney.

XX. ADJOURNMENT

**NEXT REGULAR COUNCIL MEETING:
TUESDAY, JUNE 7, 2011**