



MILPITAS CITY COUNCIL AND REDEVELOPMENT AGENCY
MEETING AGENDA
TUESDAY, DECEMBER 6, 2011

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

SUMMARY OF CONTENTS

- I. **CALL TO ORDER/ROLL CALL by the Mayor (6:00 p.m.)**
- II. **ADJOURN TO CLOSED SESSIONS OF CITY COUNCIL**
 - 1) **PUBLIC EMPLOYEE PERFORMANCE EVALUATION**
Pursuant to CA Government Code §54957
Position: City Attorney Mike Ogaz
 - 2) **CONFERENCE WITH LABOR NEGOTIATORS - COLLECTIVE BARGAINING**
Pursuant to CA Government Code §54957.6 City Negotiators: Bill Marion and Tom Williams
Employee Groups: Mid-Management/Confidential Group, Milpitas Police Officers Association
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** (Vice Mayor McHugh)
- VI. **APPROVAL OF COUNCIL MEETING MINUTES** – November 15, 2011
- VII. **SCHEDULE OF MEETINGS – COUNCIL CALENDAR** for December 2011
- VIII. **PRESENTATION** - Recognition of Girl Scouts Service Unit 620 for their role in creating handmade cards for the troops at the 2011 City of Milpitas Veterans Day Ceremony
- IX. **PUBLIC FORUM**

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to three minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

- X. **ANNOUNCEMENTS**
- XI. **ANNOUNCEMENT OF CONFLICT OF INTEREST**
- XII. **APPROVAL OF AGENDA**
- XIII. **CONSENT CALENDAR**

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. UNFINISHED BUSINESS

- 1. Request of Councilmember Giordano to Hear a Report from Staff on Policy Regarding the Sister Cities Commission and Notification of Visiting Delegations (Contact: Councilmember Giordano, 586-3032)**
- 2. Review Recommended Changes and Proposed Updates to the Flag Ordinance as Recommended by the Sister Cities and Veterans Commissions (Staff Contacts: Mike Ogaz, 586-3041, and Leslie Stobbe, 586-3352)**
- 3. Request of Councilmember Polanski for a Report Regarding the City's E-mail Policy (Staff Contact: Mike Ogaz, 586-3040)**
- 4. Request of Councilmember Polanski for a Report on Responses to Three Months of Public Records Act Requests (Contact: Councilmember Polanski, 586-3024)**
- 5. Receive an Update on the Timeline of Responses to Request for Proposals on Public Safety Outsourcing Options (Staff Contact: Tom Williams, 586-3051)**
- 6. Receive the Monthly Economic Development Report (Staff Contact: Diana Barnhart, 586-3059)**
- * 7. Receive the November 2011 Odor Control Report (Staff Contact: Kathleen Phalen, 586-3345)**
- 8. Consider Current Planning Commission Appointments and Vote to Remove One Member (Contact: Mayor Esteves, 586-3029)**

XV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

- RA1. Call to Order/Roll Call by the Mayor/Chair**
- RA2. Approval of Minutes – November 1, 2011**
- RA3. Approval of Agenda and Consent Calendar**
- RA4. 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, 2011 (Staff Contact: Emma Karlen, 586-3145)**
- *RA5. Accept the Milpitas Redevelopment Agency Fiscal Year 2010-11 Annual Report (Staff Contact: Emma Karlen, 586-3145)**
- *RA6. Adopt a Resolution Granting Final Acceptance of the New Barbara Lee Senior Center, Project No. 8176 (Staff Contact: Steve Erickson, 586-3301)**
- *RA7. Approve Plans and Specifications, and Give Conditional Authorization for the Advertisement of Bid Proposals for the Improvement of the City's Police Department Evidence Room, Project No. 8182 (Staff Contact: Steve Erickson, 586-3301)**
- *RA8. Approve Plans and Specifications, and Give Conditional Authorization for the Advertisement for Bid Proposals for Redevelopment Area Concrete Sidewalk, Driveway, and Median Repairs, Project No. 8204 (Staff Contact: Steve Erickson, 586-3301)**

- *RA9. Approve Plans and Specifications, and Give Conditional Authorization for the Advertisement for Bid Proposals for Redevelopment Area Pavement Reconstruction Project No. 8204 (Staff Contact: Steve Erickson, 586-3301)

RA10. Agency Adjournment

XVI. REPORTS OF OFFICERS AND COMMISSIONS

- * 9. Consider Mayor's Recommendations for Appointment/Re-appointments to Four Milpitas Commissions (Contact: Mayor Esteves, 586-3029)
- 10. Request of Councilmember Gomez for Discussion of the International Association of Fire Fighters Local 1699 Dental Fund (Contact: Councilmember Gomez, 586-3031)

Library Advisory Commission

- * 11. Approve Acceptance of a Donation to Milpitas Public Library, and Approve the Spending Plan from the Library Advisory Commission (Staff Contact: Felix Reliford, 586-3071)

Sister Cities Commission

- * 12. Recommendation to Accept Comune di Figline Valdarno, Italy as a New Sister City, and Authorize an Annual Budget of \$2,600 (Staff Contact: Leslie Stobbe, 586-3352)
- * 13. Receive Sister Cities Status Report (Staff Contact: Leslie Stobbe, 586-3352)

XVII. NEW BUSINESS

- 14. Review of Parks Master Plan Implementation (Staff Contact: Bonnie Greiner, 586-3227)
- 15. Receive Report from City Attorney on Security Records as Disclosable Public Records (Staff Contact: Mike Ogaz, 586-3040)

XVIII. ORDINANCE

- * 16. Waive the Second Reading and Adopt Ordinance No. 38.800 Changing the Zoning of Approximately 24 Acres Located Along Montague Expressway and Trade Zone Boulevard (Staff Contact: Tiffany Brown, 586-3283)

XIX. RESOLUTIONS

- * 17. Adopt a Resolution Granting Final Acceptance of the Park Renovation 2009 "Pathways," Project No. 5089 (Staff Contact: Steve Erickson, 586-3301)
- * 18. Adopt a Resolution Authorizing a Piggyback Agreement with Otis Elevator for the Annual Not-to-Exceed Amount of \$6,460, and Authorize the City Manager to Grant Yearly Increases Pursuant to the Contract (Staff Contact: Chris Schroeder, 586-3161)
- * 19. Adopt a Resolution Standardizing Motorola XPR6550 Radios for the Police Department, and Award the Bid for Motorola XPR 6550 Radios and Accessories to Bearcom Sacramento for the Not-to-Exceed amount of \$44,268.87 (Staff Contact: Chris Schroeder, 586-3161)
- * 20. Adopt a Resolution Authorizing the Purchase of a Vactor Sewer Cleaning Truck from Maryland Industrial Trucks, Inc. for the Not-to-Exceed Amount of \$304,456 through the Use of a Cooperative Procurement Contract (Staff Contact: Chris Schroeder, 586-3161)

XX. BIDS AND CONTRACTS

- * 21. **Authorize the City Manager to Execute an Agreement with the Association of Bay Area Governments to Acquire and Install Full Trash Capture Devices through the Bay Area-Wide Trash Capture Demonstration Project (Staff Contact: Kathleen Phalen, 586-3345)**
- * 22. **Authorize the City Manager to Execute Contracts with Artists Adrian Litman and Carla Moss for the Alviso Adobe Park Public Art Project (Staff Contact: Renee Lorentzen, 586-3409)**
- * 23. **Reject the Apparent Lowest Bid from Best Contracting Services Inc., Waive Minor Bid Irregularity, Award the Construction Contract Including Three Add Alternate Items to AJF/BHM A Joint Venture, and Authorize Staff to Execute Contract Change Orders for the Alviso Adobe Renovation Project Phase IV, Project No. 5055 (Staff Contact: Greg Armendariz, 586-3317)**
- * 24. **Authorize the City Manager to Execute a Consultant Agreement with RMC Water and Environment, Inc. for On-Call Water and Sewer System Hydraulic Modeling For Private Jobs and Various Capital Improvement Projects, and Approve a Budget Appropriation (Staff Contact: Kathleen Phalen, 586-3345)**
- * 25. **Authorize the City Manager to Execute Amendment No. 2 to the Master Agreement with Santa Clara Valley Transportation Authority Relating to the Silicon Valley Rapid Transit Program Berryessa Extension Project (Staff Contact: Greg Armendariz, 586-3317)**
- * 26. **Approve the Ranch Drive Improvement Plans, and Authorize the City Manager to Execute a Permittee Dedication and Improvement Agreement, and a Stormwater Management Facilities Operation and Maintenance Agreement for the Wal-Mart Expansion, Project No. 2525 (Staff Contact: Fernando Bravo, 586-3328)**
- * 27. **Approve First Amendment to the City Manager's Employment Agreement (Staff Contact: Tom Williams, 586-3050)**
- * 28. **Authorize the City Manager to Execute Amendment No. 1 to the Recreation Services Agreement with Barry Poole for Tennis Instruction (Staff Contact: Chris Schroeder, 586-3161)**
- * 29. **Award the Bid and Authorize the City Manager to Execute a Contract with West Valley Construction Company, Inc. for On-Call Sidewalk, Curbs and Gutters Repair and Replacement at Various City of Milpitas Sites for the Annual Not-to-Exceed Amount of \$150,000 (Staff Contact: Chris Schroeder, 586-3161)**

XXI. ADJOURNMENT

**NEXT CITY COUNCIL MEETING:
TUESDAY, JANUARY 3, 2012**

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 on the:

Arts Commission (alternate)

Emergency Preparedness Commission

Sister Cities Commission (student non-voting member)

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. UNFINISHED BUSINESS

1. **Request of Councilmember Giordano to Hear a Report from Staff on Policy Regarding the Sister Cities Commission and Notification of Visiting Delegations (Contact: Councilmember Giordano, 586-3032)**

Background: Councilmember Giordano requested to receive a report regarding the policies of the Sister Cities Commission, specifically regarding visiting delegations to the City of Milpitas.

Recommendation: Hear report of Councilmember Giordano and receive information.

2. **Review Recommended Changes and Proposed Updates to the Flag Ordinance as Recommended by the Sister Cities and Veterans Commissions (Staff Contacts: Mike Ogaz, 586-3041, and Leslie Stobbe, 586-3352)**

Background: On June 23, 2011 and August 3, 2011, respectively, the Sister Cities and Veterans Commissions recommended changing the Display of Flags Ordinance to allow flying of foreign country and city flags of official Sister Cities in the Veterans Plaza during a delegation visit. This site is recommended due to its prominent and picturesque location.

Title 1, Chapter 600 of the Milpitas Municipal Code outlines flag raising procedures. Written before completion of the existing City Hall and adjacent Veterans Plaza, this ordinance needs updating to reflect the current inventory of flag poles at City facilities:

- City Hall (front), 3 poles
- Community Center (north side), 3 poles (at former Veterans Memorial site)
- Veterans Plaza (between Community Center and City Hall), 4 poles
- Barbara Lee Senior Center (front), 3 poles
- Higuera Adobe, 2 poles

Currently, the two poles at the Higuera Adobe may be used by community groups to raise ceremonial flags and poles at the Community Center are not in use. All other sites follow national standards for flying the National, State and City flags.

Staff seeks policy direction to fly foreign country and city flags of official Sister Cities in the Veterans Plaza during a delegation visit and a review of standards for flag sites at City facilities. A copy of the Municipal Code section related to flags is included in the Council agenda packet.

Fiscal Impact: None.

Recommendation: Review and provide direction to City staff.

3. **Request of Councilmember Polanski for a Report Regarding the City's E-mail Policy (Staff Contact: Mike Ogaz, 586-3040)**

Background: Inquiry was made by Councilmember Polanski as to what policy exists regarding the use of the City e-mail system for purposes of informing City employees of upcoming events sponsored by outside organizations. Staff research into the question has revealed that Standard Operating Procedure (SOP) 9-02 prohibits all but incidental personal use of the internet by City employees using City computers, but does not address the propriety of sending mass messages to City employees on behalf of outside organizations. The City Attorney found no official City policy that governs this practice.

Information Services provides that the practice of sending mass e-mails to City employees can only be accomplished within the City network and only by designated employees. Thus, an SOP governing the practice by any City employee should be effective to create consistent practice throughout the City.

Legal Analysis: Allowing outside organizations to publish their events to City employees through mass e-mails arguably creates what is called a public forum. These are typically geographical places, such as parks or city sidewalks, where all forms of public speech are allowed. Public forums can be limited in some cases but cannot be used to exclude the views of unpopular groups and their viewpoints. The City might provide a limited public forum allowing mass messages to its employees only for nonprofit organizations, for instance, but then it would have to accept event flyers from all nonprofits regardless of content. The City could also limit the use to events that are co-sponsored by the City and thus assure that only events that the City has an interest in are displayed. Each of these attempts to create a limited public forum could be challenged on First Amendment grounds by those groups that fall outside of those that are allowed. The most defensible approach, from a liability standpoint, is a total ban. This would restrict such mass e-mails to City business only.

Staff seeks Council direction on whether to create a policy that completely bans or one that creates a limited public forum. As to the latter, direction is sought as to the desired parameters.

Fiscal Impact: None.

Recommendation: Instruct the City Attorney to draft an appropriate Standard Operating Procedure, for the signature of the City Manager, governing the practice of sending mass e-mail messages to City staff on behalf of outside organizations.

4. Request of Councilmember Polanski for a Report on Responses to Three Months of Public Records Act Requests (Contact: Councilmember Polanski, 586-3024)

Background: On November 1, Councilmember Polanski requested to receive a report on the City staff's responses to Public Records Act requests for the three months of August, September and October of this year. The City Clerk gathered information from all City Departments to provide the report, included in the agenda packet.

Recommendation: Receive the written report from the City Clerk listing Public Records Act responses for the three months, as requested by Councilmember Polanski.

5. Receive an Update on Timeline of Responses to Request for Proposals on Public Safety Outsourcing Options (Staff Contact: Tom Williams, 586-3051)

Background: On March 1, 2011, the City Council voted to ascertain the costs of outsourcing police and fire services.

On March 21, 2011, staff forwarded a letter to the Santa Clara County Sheriff's Office requesting a cost and feasibility assessment to provide police services for the Milpitas equivalent in scope to the current services provided by the Milpitas Police Department. In a March 31, 2011 letter, the Sheriff's office expressed interest in providing police services and quoted an "estimated" cost, but did not detail how they would provide *equivalent* services. Since then, staff researched the Sheriff's operations and discovered that the level of service provided to contract cities differs substantially from the police services currently provided in Milpitas. For instance, Sheriff's emergency response times to the current contract cities appear to be substantially slower than those provided by the Milpitas Police Department.

The Milpitas Fire Department has conducted preliminary inquiries regarding fire outsourcing. A Letter of Solicitation was issued March 14, 2011 to Cal-Fire (State) and Santa Clara County Fire

District (County). Both organizations expressed lukewarm interest due to a lack of a comprehensive Request for Proposals being developed and released. Cal-Fire expressed the need for Milpitas to commit to a 30-year agreement along with a four-out-of-five favorable vote of the City Council in support of outsourcing fire services. County Fire expressed concern due to a lack of a contiguous border that inhibits a rapid response for additional resources into Milpitas if needed. Milpitas Fire is adamant that the current level of fire service (four- minute response times, ALS on every rig, etc.) in the community be maintained, if not enhanced, as opposed to a degraded level of service based on the current service delivery model of the awarded contract provider.

Going forward, obtaining a detailed, realistic estimate of the cost of outsourcing equivalent police and fire services would take an additional three months, inclusive of one to two months for the finalization of Request for Proposals for police services and for fire services; a 30-day response period for any interested respondents; one to two months to review and assess any proposals that are received, including interviews of the top-rated agencies; and another 15 days to present to the City Council. As such, final proposals, if received could be presented to City Council as early as April 2012.

The primary challenge, staff has realized, to receiving adequate responses from outside providers is ensuring that any respondents will reply to City of Milpitas' existing needs, expectations, and level of service rather than applying their current level of service and practice to the City of Milpitas. The Request for Proposal process will address the City's level of service needs and expectations to ensure that any respondent has provided a reliable submittal, so that the current high level of public safety services in Milpitas is not compromised.

Fiscal Impact: Unknown at this time.

Attachments: (1) Milpitas Fire Department Letter of Solicitation, (2) response letter from County Fire, (3) March 31, 2011 response letter from Sheriff Laurie Smith, and (4) Cal Fire memo of March 29, 2011.

Recommendation: Receive a report from the City Manager and the Chiefs of Police and Fire.

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

Background: Business Retention in Milpitas Follow-up: Staff was in contact with all businesses that indicated they were "at risk" when the Milpitas Chamber of Commerce met with them as part of the Business Retention in Milpitas outreach program. In addition, staff met with Valley Transportation Authority (VTA) representatives regarding its easement, rights-of-way and land acquisition program as a result of Council inquiries and Chamber reports. While the negotiations for acquisition are confidential, VTA staff was able to provide a thorough overview of the areas where businesses will be impacted and a sense of what the schedule is for the actions. Most of the businesses impacted, approximately 25, are affected by the utility relocation contract which is anticipated to be awarded by the VTA Board in December. Utility relocation is the first step in the process for the BART extension and station construction in Milpitas. City staff will continue to meet with VTA staff and work together to retain as many impacted businesses as possible in Milpitas.

McCarthy Ranch Marketplace: Another party is in contract for possible purchase of the existing Marketplace north of Ranch Drive and east of McCarthy Boulevard. Staff is meeting with the potential buyers and also in contact with current ownership during the due diligence period.

Great Mall: Staff is coordinating with the Great Mall management staff in preparation of the upcoming Black Friday shopping event. In addition, City staff will work with the Mall to

develop a program that will allow a more comprehensive approach to special event activities so that life safety is at the forefront of event layouts and implementation.

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

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

- * 7. **Receive the November 2011 Odor Control Report (Staff Contact: Kathleen Phalen, 586-3345)**

Background: From October 26, 2011 through November 30, 2011, the Bay Area Air Quality Management District (BAAQMD) received eleven odor complaints originating in Milpitas. Three identified a garbage-related odor, two identified a sewage-related odor and six did not identify a source. As of the last Council update, the City's odor reporting website received twenty-five reported complaints. Staff activities to coordinate with the City of San Jose on Water Pollution Control Plant odor mitigation efforts are described in the report included in the Council agenda packet.

Fiscal Impact: None.

Recommendation: Receive the November 2011 odor report.

- 8. **Consider Current Planning Commission Appointments and Vote to Remove One Member (Contact: Mayor Esteves, 586-3029)**

Background: Mayor Esteves reports that Commissioner Tiernan provided an inappropriate statement to a local newspaper. Commissioners should be held to a high standard with respect to accuracy of information given out. Therefore, he is recommending removal of the Commissioner.

Councilmembers are referred to the Milpitas Municipal Code I-500-1.04 which provides that "Any or all members of the Planning Commission may be removed from office prior to the expiration of the normal term of office without cause upon an affirmative vote of three (3) City Councilmembers, at a regular meeting of the City Council."

Recommendation: Upon recommendation of Mayor Esteves, vote to remove Mark Tiernan from the Milpitas Planning Commission, creating a vacancy in the current term that expires in December 2012.

XV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

- RA4. **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, 2011 (Staff Contact: Emma Karlen, 586-3145)**

Background: Transmitted herewith are the Comprehensive Annual Financial Report (CAFR) of the City of Milpitas, Milpitas Redevelopment Agency Component Unit Financial Statements, Single Audit Report, Bicycle/Pedestrian Projects Financial Statements, Agreed Upon Procedures Report on Compliance with the Appropriations Limit Increment and the Memorandum on Internal Control and Required Communications for the fiscal year ended June 30, 2011.

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

The CAFR presents the operations and financial activity of all the City's various funds, including the General Fund. It includes an unqualified audit opinion from Maze & Associates, the City's external auditors that the financial statements present fairly the results of operations for the year ended June 30, 2011, 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, 2011, 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 is required by the Office of Management and Budget Circular A-133 for state and local governments and non-profit organizations that receive Federal Awards. The report did not disclose any material weaknesses or significant deficiencies on the internal control over the major federal award programs.

Bicycle/Pedestrian Projects Financial Statements

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

Agreed Upon Procedures Report on Compliance with the Appropriations Limit Increment

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

Memorandum on Internal Control and Required Communications

Under generally accepted auditing standards, the City's 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 and Required Communications ("Management Letter") for the Year Ended June 30, 2011. This report includes management response to the auditor's recommendations on monitoring current and future Redevelopment Agency-related transactions, Senior Center cash collections, periodic review of the General Ledger access log, and regular change of passwords on the financial application. It should be noted that the auditors do not view any of their comments as material weaknesses or significant deficiencies on the City's internal control structure.

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, 2011.

- *RA5. Accept the Milpitas Redevelopment Agency Fiscal Year 2010-11 Annual Report (Staff Contact: Emma Karlen, 586-3145)**

Background: Pursuant to the reporting requirements of 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 2010-11 Annual Report to provide Agency board members with an overview of the redevelopment activities and accomplishments for the two project areas. An independent financial audit report will be presented for the Agency Board's acceptance on the agenda item above.

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

Recommendation: Accept the Milpitas Redevelopment Agency Fiscal Year 2010-11 Annual Report.

***RA6. Adopt a Resolution Granting Final Acceptance of the New Barbara Lee Senior Center, Project No. 8176 (Staff Contact: Steve Erickson, 586-3301)**

Background: This project was initially accepted on November 16, 2010, and has passed the one-year warranty period. A final inspection of the installed public improvements has been made and the work was found to be satisfactory. The project provided for the construction of the new Senior Center by renovation of the former Milpitas Library building located at 40 North Milpitas Boulevard.

The project predates the halt on all redevelopment activities caused by the passage of AB X1 26 and constitutes an “enforceable obligation” that is not subject to the California Supreme Court stay on most Agency activities. Under the contract documents, the Agency is legally required to finally accept the improvements upon the construction and delivery of facilities that meet the contract specifications and satisfaction of warranty requirements.

Staff recommends the Redevelopment Agency and City Council grant final project acceptance of the Barbara Lee Senior Center, Project No. 8176, and release of the contractor’s bond.

Fiscal Impact: None.

Recommendation: Adopt a resolution granting final acceptance of the Barbara Lee Senior Center, Project No. 8176 and release of the contractor’s bond.

***RA7. Approve Plans and Specifications, and Give Conditional Authorization for the Advertisement of Bid Proposals for the Improvement of the City’s Police Department Evidence Room, Project No. 8182 (Staff Contact: Steve Erickson, 586-3301)**

Background: Staff completed plans and specifications for the modification and improvement of the Police Department Evidence Room to provide new floor covering and painting, separate the work spaces from the storage area, and for the improvement of the heating ventilation and air conditioning system in the evidence room work spaces. The Engineer’s Estimate for the project is \$175,000. A copy of the title sheet of the project plans is included in the Agency’s agenda packet and a complete set of plans and specifications are available for review in the office of the City Engineer.

This Redevelopment Agency project was put on hold in July 2011 as a result of the Governor’s budget action and resulting court-ordered stay from the State Supreme Court. A ruling from the Court is anticipated by January 15, 2012, and staff wishes to immediately move forward with this project should the ruling be favorable toward the Redevelopment Agency. To this end, staff is requesting that at this time the Agency approve the project plans and specifications now. Staff also requests that the Agency Board give conditional authorization for the advertisement for bid proposals for the City’s consideration should the court rule favorably making funding available for this project.

Fiscal Impact: None. Should the State Supreme Court rule favorably for the Redevelopment Agency, sufficient funds will be available in the project budget for this work. Otherwise, the Project will not proceed.

Recommendations:

1. Approve the plans and specifications for Project No. 8182.
2. Conditionally authorize advertisement for bid proposals.

***RA8. Approve Plans and Specifications, and Give Conditional Authorization for the Advertisement for Bid Proposals for Redevelopment Area Concrete Sidewalk, Driveway, and Median Repairs, Project No. 8204 (Staff Contact: Steve Erickson, 586-3301)**

Background: Staff completed plans and specifications for the Redevelopment Area Concrete Sidewalk, Driveway, and Median Repairs Project No. 8204. The project will provide for the installation of current Americans with Disability Act (ADA) compliant curb ramps, and the replacement of damaged sidewalk, driveways, curb and gutter, and modifications to street median islands to accommodate a future pavement overlay. The project area includes portions of Sycamore Drive and McCarthy Boulevard, which are within the City's Redevelopment Area. The Engineers Estimate for this project is \$400,000. A copy of the title sheet of the project plans is included in the Agency's agenda packet and a complete set of plans and specifications are available for review in the office of the City Engineer.

This Redevelopment Agency project was put on hold in July 2011 as a result of the Governor's budget action and resulting court-ordered stay from the State Supreme Court. A ruling from the Court is anticipated by January 15, 2012, and staff wishes to immediately move forward with this project should the ruling be favorable toward the Redevelopment Agency. To this end, staff is requesting that at this time the Agency approve the project plans and specifications now. Staff also requests that the Agency Board give conditional authorization for the advertisement for bid proposals should the court rule favorably making funding available for this project.

Fiscal Impact: None. Should the State Supreme Court rule favorably for the Redevelopment Agency, sufficient funds will be available in the project budget for this work. Otherwise, the project will not proceed.

Recommendations:

1. Approve the plans and specifications for the Redevelopment Area concrete sidewalk, driveway, and median repairs for Project No. 8204.
2. Conditionally authorize advertisement for bid proposals.

***RA9. Approve Plans and Specifications, and Give Conditional Authorization for the Advertisement for Bid Proposals for Redevelopment Area Pavement Reconstruction Project No. 8204 (Staff Contact: Steve Erickson, 586-3301)**

Background: Staff completed plans and specifications for the Redevelopment Development Area Pavement Reconstruction, Project No. 8204. The project will provide for the reconstruction and overlay of Sycamore Drive from McCarthy Boulevard to Barber Lane, and the overlay of McCarthy Boulevard from Barber Lane to Tasman Drive. These streets are within the City's Redevelopment Agency boundary. The engineer's estimate for the project is \$2,250,000. A copy of the title sheet of the project plans is included in the Agency's agenda packet and a complete set of plans and specifications are available for review in the office of the City Engineer.

This Redevelopment Agency Project was put on hold in July as a result of the Governor's budget action and resulting court-ordered stay from the State Supreme Court. A ruling from the Court is anticipated by January 15, 2012, and staff wishes to immediately move forward with this project should the ruling be favorable toward the Redevelopment Agency. To this end, staff is requesting that at this time the Agency approve the project plans and specifications now. Staff also requests that the Agency Board give conditional authorization for the advertisement for bid proposals should the court rule favorably making funding available for this project.

Fiscal Impact: None. Should the State Supreme Court rule favorably for the Redevelopment Agency, sufficient funds will be available in the project budget for this work. Otherwise, the project will not proceed.

Recommendations:

1. Approve the plans and specifications for the Redevelopment Pavement Reconstruction Project No. 8204.
2. Conditionally authorize advertisement for bid proposals.

RA10. Agency Adjournment

XVI. REPORTS OF OFFICERS AND COMMISSIONS

- * **9. Consider Mayor's Recommendations for Appointment/Re-appointments to Four Milpitas Commissions (Contact: Mayor Esteves, 586-3029)**

Background: Mayor Esteves recommends the following citizens be re-appointed to three Milpitas Commissions.

Public Art Committee

Re-appoint Julie Cherry as an Alliance for the Arts Representative to a term that expires in October 2014.

Recycling and Source Reduction Advisory Commission

Re-appoint Kashmir Gill as Alternate No. 1 to a term that expires in October 2013.

Senior Advisory Commission

Re-appoint Barbara Ebright to a term that expires in December 2013.

Sister Cities Commission

Newly appoint Brenda Su as a student non-voting member to a term that expires in September 2012.

Recommendation: Consider the recommendations from Mayor Esteves, and move to approve appointment/re-appointments to four Milpitas Commissions.

- 10. Request of Councilmember Gomez for Discussion of the International Association of Fire Fighters Local 1699 Dental Fund (Contact: Councilmember Gomez, 586-3031)**

Background: In February of 2011, the City Manager ordered an audit of the Milpitas IAFF Local 1699 Managed Dental Fund. Most recommendations presented as a result of the audit have been implemented by the fire union dental fund committee. On November 15, 2011, Councilmember Gomez requested this item be placed on the Council agenda for discussion.

A copy of the audit report is included in the agenda packet.

Recommendation: Hear report of Councilmember Gomez.

Library Advisory Commission

- * **11. Approve Acceptance of a Donation to Milpitas Public Library, and Approve the Spending Plan from the Library Advisory Commission (Staff Contact: Felix Reliford, 586-3071)**

Background: On November 8, 2011, Community Librarian Linda Arbaugh received a donation from David Hufton in the amount of \$5,000 to the Milpitas Public Library. Librarian Arbaugh has accepted the donation on behalf of the Library Advisory Commission (LAC) and forwarded the matter for acceptance of the donation and a proposed spending plan to the entire LAC.

At its meeting on November 21, 2011, the LAC accepted the donation, approved the spending plan and directed staff to forward its recommendation to the City Council. Included in the Council's agenda packet is a copy of the LAC minutes and the proposed spending plan. Upon

acceptance by the Council, the individual will be recognized by the LAC on the donor board at the Milpitas Public Library.

Fiscal Impact: None.

Recommendation: Accept the donation gift of \$5,000 to the Milpitas Public Library and the proposed spending plan as recommended by the Library Advisory Commission.

Sister Cities Commission

*** 12. Recommendation to Accept Comune di Figline Valdarno, Italy as a New Sister City, and Authorize an Annual Budget of \$2,600 (Staff Contact: Leslie Stobbe, 586-3352)**

Background: At its November 17, 2011 meeting, the Sister Cities Commission unanimously recommended a sister city relationship with the Comune di Figline Valdarno, Italy. Lead Commissioner Karen Serpa visited Figline Valdarno in October with a proclamation from the City of Milpitas describing our enthusiastic pursuit to form a relationship with a city in the Province of Florence. L'Assessore (Assistant Vice Mayor) Caterina Cardi expressed Figline Valdarno's desire to form a sister city relationship with Milpitas and requested that the cities begin the process of forming this relationship with an emphasis on cultural exchanges and tourism. L'Assessore (Council member) Daniele Raspini is assigned as the Council Liaison representing Figline Valdarno. Also included in the agenda packet is a copy of a resolution from the County of Santa Clara recognizing and commending both cities for pursuing the creation of a sister city relationship.

Comune di Figline Valdarno is located in the Province of Florence in the Italian region of Tuscany, located about 25 km southeast of Florence. With a population of 17,500 and an area of 45 square miles, Figline Valdarno offers a rich cultural history dating to the 15th Century.

Fiscal Impact: Existing sister cities have an annual budget of \$2,600 each. Funds for Sister City relationships are held in the Council Promotions Budget.

Recommendation: Move to accept Comune di Figline Valdarno, Italy as an official Sister City and authorize an annual budget of \$2,600.

*** 13. Receive Sister Cities Status Report (Staff Contact: Leslie Stobbe, 586-3352)**

Background: The City of Milpitas hosts three Sister Cities, one Friendship City, and is in the process of reviewing a potential fourth Sister City Relationship. This report reviews the status of existing relationships.

City of Dagupan, Philippines: A sister city since April 2003, the cities of Dagupan and Milpitas have enjoyed a supportive relationship with visits of Dagupan officials to review municipal operations, policies and procedures. This relationship has focused on an exchange of information about governmental programs and projects. It is also supported by the Filipino community by hosting receptions and one visit of Dagupan students. In August, Mayor Benjamin Lim wrote to Mayor Esteves with a request to begin reciprocal student exchanges. The request was referred to the Sister Cities Commission which began its review at its September 22 meeting. A concern was raised upon the Commission's usual research of sister city requests. A US State Department's Travel Warning of June 14, 2011, advises US travelers to exercise extreme caution in travel to the Philippines due to indiscriminate terrorist activities, targeting US citizens, in southern regions, but also specifically to travelers in and around the area of Manila. Since Dagupan is approximately 100 miles north east of Manila, the Commission directed staff to inquire further about the travel warning. Response from State Department staff was that the warning applies to the entire country, with an emphasis on the stated areas.

Chair Grilli reviewed the request with Milpitas High School (MHS) Ken Schlaff, who also expressed concern about sending Milpitas students to the Philippines at this time. Principal Schlaff offered to host Dagupan students during Spirit Week (usually the first week in October). Due to spring academic requirements and State testing schedules, this is the only week that the school has available to host any visiting school delegation. The Commission reviewed the student exchange request at its meeting of November 17, 2011. There was unanimous decision to decline to send Milpitas students to Dagupan, but to welcome its students to Milpitas during MHS Spirit Week. In this case, Dagupan and Huizhou Municipality student visits would alternate attending years.

Huizhou Municipality, China: A sister city since August 2006, Huizhou and Milpitas are involved in an active relationship of annual student and official delegation visits to Milpitas. Although a Milpitas student and adult visit to Huizhou has occurred only once during this relationship, planning is underway to send another delegation to Huizhou during Spring Break in April 2012.

Tsukuba City, Japan: A sister city since July 1996, this long standing relationship weathered the municipal incorporation of Kukizaki City, the original sister city, and the March 11, 2011 earthquake (epicenter approximately 175 miles northwest of Tsukuba) that caused considerable damage to Tsukuba. This year is the 15th Anniversary of the Milpitas-Tsukuba Sister City Relationship. In honor of this milestone, both cities have prepared a photo exchange for display. Tsukuba featured cultural and economic photos of Milpitas during its Tsukuba Shimin Bunkasaiin (Tsukuba Citizen's Culture Festival) at the Tsukuba Capio, a conference and event center. Tsukuba Lead Commissioner Dana Arbaugh coordinated a slide show of Milpitas photos that was sent to Tsukuba in late September. Tsukuba officials reciprocated in November with a collection of stunning photos that will be displayed in February. Commissioner Arbaugh is working on logistics. Details will be presented to the Council along with a brief slide show of selected Milpitas and Tsukuba photos in February.

Nam-gu, Incheon, South Korea: This Friendship City Relationship began July 2009, but there has been no activity or contact with Nam-gu representatives since that date. Lead Commissioner Marsha Binh Tran attempted to reach a local contact designated by Nam-gu to represent its interests to Milpitas without response. Staff is researching archive and Internet information to prepare a letter of interest from Mayor Esteves to Mayor Kim Du-Kyeom.

Fiscal Impact: None.

Recommendation: Receive the staff report on current Sister Cities to Milpitas from the staff liaison to the Sister Cities Commission.

XVII. NEW BUSINESS

14. Review of Parks Master Plan Implementation (Staff Contact: Bonnie Greiner, 586-3227)

Background: At the request of Councilmember Giordano this item has been placed on the agenda for review.

In April 2008, the Parks Master Plan was adopted by the City Council. The plan included an inventory and analysis of the 33 existing parks, needs assessment, action plan recommendations, funding strategies and maintenance recommendations. As a result of the approved Parks Master Plan, Phase 1 of the Cardoza Park renovation was completed and opened to the public in June 2010.

Outlined in the Capital Improvement Program (CIP 2011-16) are nine scheduled Park renovation projects. The next park scheduled to be renovated is Pinewood Park with a design budget scheduled in 2012-13 and the contractor's budget scheduled in 2013-14.

Recommendation: Review the Parks Master and current CIP schedule.

15. Receive Report from City Attorney on Security Records as Disclosable Public Records (Staff Contact: Mike Ogaz, 586-3040)

Background: The City Council has requested clarification on whether certain security-related records, including security videos, are disclosable public records. The City Attorney prepared a memorandum on the subject, which is included in the agenda packet.

Recommendation: Receive a report from the City Attorney on security records as disclosable public records.

XVIII. ORDINANCE

*** 16. Waive the Second Reading and Adopt Ordinance No. 38.800 Changing the Zoning of Approximately 24 Acres Located Along Montague Expressway and Trade Zone Boulevard (Staff Contact: Tiffany Brown, 586-3283)**

Background: On November 15, 2011, the City Council introduced Ordinance No. 38.800 to rezone approximately 24 acres of land bordering Montague Expressway from Boulevard Very High Density Mixed Use (MXD3) to High Density Transit Orientated Residential (R3). The rezone proposal would allow for flexibility in redeveloping the rezoned sites and attracting new tenants.

No changes have been made to the ordinance since the first reading and the ordinance is now ready for adoption.

Fiscal Impact: None.

Recommendations:

1. Waive the second reading of Ordinance No. 38.800.
2. Adopt Ordinance No. 38.800, changing the zoning of approximately 24 acres located along Montague Expressway and Trade Zone Boulevard.

XIX. RESOLUTIONS

*** 17. Adopt a Resolution Granting Final Acceptance of the Park Renovation 2009 "Pathways," Project No. 5089 (Staff Contact: Steve Erickson, 586-3301)**

Background: This project was initially accepted on November 2, 2010 and passed the one-year warranty period. A final inspection of the installed public improvements has been made and the work was found to be satisfactory. The project provided the repair or replacement of cracked and lifted sidewalks, walking pathways, and replacement of redwood header board in the Dixon Landing, Pinewood, Murphy, Robert E. Browne, Hidden Lake, and Strickroth Parks.

Fiscal Impact: None.

Recommendation: Adopt a resolution granting final acceptance of the Park Renovation 2009 "Pathways," Project No. 5089 and release of the contractor's bond.

*** 18. Adopt a Resolution Authorizing a Piggyback Agreement with Otis Elevator for the Annual Not-to-Exceed Amount of \$6,460, and Authorize the City Manager to Grant Yearly Increases Pursuant to the Contract (Staff Contact: Chris Schroeder, 586-3161)**

Background: The City’s current contract with Otis Elevator expired on November 19, 2011. However, the National Intergovernmental Purchasing Alliance (NIPA), which is a cooperative purchasing organization, with the specific purpose of reducing procurement costs by leveraging group volume, recently competitively bid a contract for elevator maintenance service, which was awarded exclusively to Otis Elevator. The City was not a party to the original solicitation but by piggybacking the Otis contract, which is allowed pursuant to Municipal Code Section I-2-3.07 “Piggyback Procurement,” the City can enter into a separate contract with the vendor and incorporate by reference the original solicitation, terms, conditions and prices.

The new contract is for five years. The cost of the first year of the contract is \$3,960. The contract contains a compensation adjustment clause based on the International Union of Elevator Constructors (IUEC Contract) that allows for increase or decrease in material and labor costs, and which has been increasing at an average of 5% per year. Staff added \$2,500 a year to cover incidentals and rate increases, bringing the total annual amount of the contract to \$6,460 or \$32,300 for the five years of the agreement. Under the new contract the City will save \$191 per month or \$2,292 per year over the previous contract. Staff recommends City Council authorize the City Manager to execute the contract with Otis Elevator and grant yearly increases pursuant to the contract without further City Council action.

Fiscal Impact: None. This is a programmed expense in the Facilities Maintenance Operating Budget.

Recommendation: Adopt a resolution authorizing a piggyback agreement with Otis Elevator for the annual not-to-exceed amount of \$6,460 and authorize the City Manager to grant yearly increases pursuant to the contract.

- * 19. **Adopt a Resolution Standardizing Motorola XPR6550 Radios for the Police Department, and Award the Bid for Motorola XPR 6550 Radios and Accessories to Bearcom Sacramento for the Not-to-Exceed amount of \$44,268.87 (Staff Contact: Chris Schroeder, 586-3161)**

Background: On January 18, 2011, the City Council accepted the 2011 Citizen Options for Public Safety (COPS) grant in the amount of \$100,000 and authorized appropriation in that amount to the Police Department budget. \$35,000 was allocated to equip officers with portable radios that meet current technological needs. On 10/18/11 the City Council adopted a resolution to accept the 2011 Edward Byrne Justice Assistance Grant (JAG) in the amount of \$13,913, also for the purchase of portable radios.

The Milpitas Police Department identified the Motorola XPR6550 hand held radio as the only radio that can communicate on our current Milpitas radio infrastructure and can also communicate on a local private vendor’s infrastructure when necessary. This radio also meets the minimum requirements of having an alpha numeric display, MDC1200 Signaling and a minimum 48 channel capacity. Staff requests that the City of Milpitas standardize the Motorola XPR6550 Radio pursuant to Municipal Code Section I-2-3.13 Standardization. The bid was advertised on the City Website, in the local newspaper and on Public Purchase. Five bids were received and are summarized below.

<u>Bidder</u>	<u>42 Motorola XPR6550 Radios and Accessories</u>
Bearcom, Sacramento	\$36,609.32
Bearcom, Brisbane	Nonresponsive (Did not bid all items)
Golden State Communications	\$45,860.72
Vision Communications Co.	\$49,860.72
Telepath Corporation	\$42,324.00

The price includes the Milpitas Police Department taking advantage of a Motorola trade-in rebate plan that will save the city \$100.00 per device traded-in or a total of \$4,000. For the trade-ins, we will be handing over old unusable hand held radios and Nextel phones.

The bid was awarded on the basis of 42 radios and accessories. However, because the bid came in lower than expected there is room in the budget for additional radios and accessories. The final quote from Bearcom, Sacramento is for 50 radios and accessories for \$44,268.87. Even with the additional radios and accessories Bearcom, Sacramento is still the lowest bidder.

Fiscal Impact: None. The 2011 Edward Byrne Justice Assistance Grant and the COPS 2011 grant total \$48,913 and will cover the costs of the proposed purchase of the portable radios and accessories.

Recommendations:

1. Adopt a resolution standardizing Motorola XPR6550 Radios for the Police Department
2. Award the bid for Motorola XPR6550 Radios and Accessories to Bearcom, Sacramento, for the not-to-exceed amount of \$44,268.87.

*** 20. Adopt a Resolution Authorizing the Purchase of a Vactor Sewer Cleaning Truck from Maryland Industrial Trucks, Inc. for the Not-to-Exceed Amount of \$304,456 through the Use of a Cooperative Procurement Contract (Staff Contact: Chris Schroeder, 586-3161)**

Background: The City of Milpitas has two Vactor sewer cleaning trucks. The backup truck has completely failed due to age and been taken out of service. The FY 2011-12 operating budget includes replacement of the out of service Vactor sewer cleaning truck. Maryland Industrial Trucks, Inc. is the sole Federal General Services Administration contract holder for all fifty Vactor dealers through out the United States. The sole authorized dealer for Vactor in Northern California is Owen Equipment Sales, located in Sacramento. Owen Equipment Sales staff worked with Milpitas staff to prepare the specifications for the truck. They then sent the specifications to Maryland Industrial Trucks, Inc. who prepared the GSA quote. Owens Equipment Sales will also act as the City's liaison to Maryland Industrial Trucks, Inc. during the manufacturing process to assure that the truck is built to the correct City specifications. When the truck is ready they will also deliver it to the City and provide staff training on the proper operation of the truck, as well as taking care of all warranty issues, parts and service from that point on. The City is guaranteed the lowest price that Vactor offers for the truck by making the purchase cooperatively through the Federal General Services Administration program. Cooperative purchasing from the Federal General Services Administration is specifically authorized pursuant to Municipal Code Section I-2-3.08 "Cooperative Procurement".

Fiscal Impact: Current year's operating budget includes \$278,658 for the purchase, available from the Equipment Replacement Fund and the Public Works Operating Budget. The remaining balance of \$25,798 requires a budget appropriation and the funding is available from the Sewer Fund.

Recommendations:

1. Adopt a resolution authorizing the purchase of a Vactor sewer cleaning truck from Maryland Industrial Trucks, Inc. for the not-to-exceed amount of \$304,456 through the use of a cooperative procurement contract.
2. Approve a budget appropriation of \$25,798 from the Sewer Fund to the Public Works Department.

XX. BIDS AND CONTRACTS

*** 21. Authorize the City Manager to Execute an Agreement with the Association of Bay Area Governments to Acquire and Install Full Trash Capture Devices through the Bay Area-Wide Trash Capture Demonstration Project (Staff Contact: Kathleen Phalen, 586-3345)**

Background: Provision C10 of the Municipal Regional Stormwater Permit (MRP) requires cities to install trash capture devices into their stormwater collection systems to treat runoff from 30 percent of their commercial districts by July 1, 2014. To provide financial assistance to the regulated cities, the San Francisco Estuary Partnership of the Association of Bay Area Governments (ABAG) obtained funds from the American Recovery and Reinvestment Act of 2009 (ARRA) for a Bay Area-wide trash capture demonstration project and is using these funds to provide trash capture devices to cities at no cost.

ABAG has contracted directly with twelve vendors for devices certified by the Regional Water Board to meet its MRP specifications. These vendors offer many types of devices ranging from small, low-flow catch basin inserts to large, high-flow in-line storm drain nets, screens, and racks. Given that most of Milpitas stormwater must pass through one or more of the City's thirteen pump stations, staff is evaluating large, high-flow trash capture screens to be installed at the stormwater pump stations. The City's ongoing operation and maintenance costs will be lower for a few large devices than for numerous small catch basin devices.

Upon execution of the agreement, ABAG will authorize its vendors to work at the City's direction to provide and install the trash capture devices. At this time, ABAG is allocating up to \$78,628 for Milpitas's purchase and installation costs, but the Agreement will allow the City to accept additional devices or services from reallocated funds if they should become available. To ensure ABAG can comply with its ARRA grant requirements, the City must commit to installing the trash control devices by November 1, 2012. ABAG also requires that the City display a project placard at City Hall to acknowledge the funding for the project.

Fiscal Impact: None.

Recommendation: Authorize the City Manager to execute an agreement with the Association of Bay Area Governments to acquire and install full trash capture devices through the Bay Area-wide trash capture demonstration project.

- * 22. **Authorize the City Manager to Execute Contracts with Artists Adrian Litman and Carla Moss for the Alviso Adobe Park Public Art Project (Staff Contact: Renee Lorentzen, 586-3409)**

Background: On October 18, 2011, the City Council approved two public art pieces for the Alviso Adobe Park project by Artists Adrian Litman and Carla Moss. The Public Art Pieces are proposed to be located within the park, in the vicinity of the general gathering area and the park entrance. The final locations will be field adjusted as necessary for integration within the park for the enjoyment of the park visitors.

Their respective art project budgets and proposed locations are as follows:

Park Center/Gathering Area:	Carla Moss	"Water Tower"	\$20,000
Park Entrance:	Adrian Litman	"Wagon Sculpture"	\$19,360

As approved, the total project budget will be \$39,360. Staff has drafted per the artists project bid(s), the attached draft contact agreements. All projects are scheduled to be completed and installed by the Alviso Adobe Park public opening. In order to properly coordinate construction contract work with art installation work on the site, staff requests administrative contract amendment authority to modify the currently contracted installation dates, if needed. Such amendment authority would not include any additional funding or spending approval powers.

Fiscal Impact: None. Sufficient funds are available and allotted for this project in the Public Art budget.

Recommendations:

1. Authorize the City Manager to execute contracts with Adrian Litman in the amount not to exceed \$19,360, and with Carla Moss in the amount not to exceed \$20,000.
 2. Authorize staff to make administrative amendments as needed to the art agreements to change required installation dates.
- * 23. **Reject the Apparent Lowest Bid from Best Contracting Services Inc., Waive Minor Bid Irregularity, Award the Construction Contract Including Three Add Alternate Items to AJF/BHM A Joint Venture, and Authorize Staff to Execute Contract Change Orders for the Alviso Adobe Renovation Project Phase IV, Project No. 5055 (Staff Contact: Greg Armendariz 586-3317)**

Background: This project, located at the City-owned Alviso Adobe near Calaveras Road, will construct a historic-themed public park and other improvements to replicate an early 1900's orchard and Mexican Rancho. The improvements include reconstruction of an existing water tower, garage, and cutting shed structures and installation of restroom, parking facilities, landscaping, benches, and picnic areas. Project completion of the park is anticipated by late 2012. Renovation of the Adobe's interior is not included in this project as its estimated \$1 million cost is not currently funded.

The project was advertised and four sealed bid proposals were received on November 8, 2011. Bid proposals ranged from \$2,140,250 to \$2,242,770, and the engineer's estimate for the base bid project work was \$2,400,000. Staff determined the apparent lowest bid, submitted by Best Contracting Services, Inc., included a significant bid irregularity as it did not meet the bid document requirement for self performing at least 50% of the contract work. Staff and the City Attorney have reviewed this bid irregularity and have determined this is a significant and material bid deviation that cannot be waived under California law. In accordance with the requirements of the Public Contract Code and the City's bid documents, staff recommends the Council reject the bid submitted by Best Contracting Services Inc., and look to the apparent second low bidder.

The bid submitted by the second low bidder, AJF/BHM, a joint venture, in the amount of \$2,176,774.85 appears to be the lowest responsive bid. AJF/BHM's base bid contains a minor bid irregularity in that the extension of unit quantities for bid item 9 was incorrectly calculated, resulting in an error in the total amount of 15 cents. However, the Public Contract Code and the City's bid documents define this as a "minor bid irregularity," and authorize the City to waive this irregularity and proceed with the award of the contract. Project Staff and the City Attorney's Office have reviewed this bid irregularity and confirmed that it is minor and not significant. It is recommended the Council waive the minor bid irregularity and award the construction contract to AJF/BHM.

The project bid package also included three add alternate bid items for consideration of submitted pricing and available project funding after bid opening. The add alternate bid items provide for the construction of new doors at the cutting shed and garage structures, and for the replacement of the redwood tank structure at the water tower. The Add Alternate pricing submitted for these additional items of work totals \$66,000, which is considered reasonable. Staff recommends awarding the construction contract with the three add alternate items for total construction contract not to exceed \$2,242,774.85, which is within the project's budget and no additional budget appropriation is required.

As was approved and utilized in the successful completion of the Senior Center, Library, and recent large paving and utility projects with tight completion schedules, staff is requesting the use of the same change order policy that allows for the timely completion of this phase of the Alviso Adobe project. This policy authorizes staff to execute change orders in order to address the need to respond swiftly to construction conditions in order to limit potential claims or risk to the City. The construction contingency established for this project is \$350,000, and the 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.

Recommendations:

1. Reject the bid from Best Contracting Services Inc. as nonresponsive.
2. Waive a minor bid irregularity and award the Construction Contract, including three add alternate items to AJF/BHM in the amount of \$2,242,774.85, for the Alviso Adobe Renovation Phase IV, Site Improvements, Project No. 5055.
3. Authorize staff to execute change orders for Alviso Adobe Renovation Phase IV, Site Improvements, Project No. 5055, provided that the change orders do not exceed the established construction contingency amount for the project.

- * **24. Authorize the City Manager to Execute a Consultant Agreement with RMC Water and Environment, Inc. for On-Call Water and Sewer System Hydraulic Modeling For Private Jobs and Various Capital Improvement Projects, and Approve a Budget Appropriation (Staff Contact: Kathleen Phalen, 586-3345)**

Background: RMC Water and Environment, Inc. prepared the City's water and sewer system master plans and, as part of this work, developed the hydraulic models for these systems. On June 3, 2008, the City Council approved a consultant agreement with RMC to perform various water and sewer system hydraulic modeling scenarios on an on-call basis to evaluate the potential impact of various development proposals on system capacity. Modeling is a useful tool for assessing how new utility connections will impact the existing system and identifying any short-term impacts when pipelines are temporarily taken out of service. The term of RMC's agreement has been extended twice and will now expire on December 31, 2011.

The City's need for hydraulic modeling support remains strong due to the current level of development interest, infrastructure replacement, and the proposed utility relocations due to the BART construction. The proposed agreement allows for future on-call hydraulic water and sewer modeling on a project basis as authorized by City staff. The scope of work also includes developing a recycled water model and training for City staff to conduct modeling work in the future. The proposed agreement term is three years. Staff has negotiated an agreement in an amount not to exceed \$200,000, with \$100,000 earmarked for as-needed developer-reimbursable work and \$100,000 set aside for City utility operations modeling.

Fiscal Impact: A budget appropriation in the amount of \$100,000 to the Engineering Division operating budget is necessary to initiate the development project work; however, this funding will be reimbursed by developers through their private jobs accounts. There are sufficient funds in the Capital Improvement Projects No. 7108 and No. 6110 for City utility operations modeling work.

Recommendations:

1. Approve and authorize the City Manager to execute a consultant agreement with RMC Water and Environment in the amount of \$200,000.
2. Approve a budget appropriation in the amount of \$100,000 from the General Fund into the Engineering budget.

- * **25. Authorize the City Manager to Execute Amendment No. 2 to the Master Agreement with Santa Clara Valley Transportation Authority Relating to the Silicon Valley Rapid Transit Program Berryessa Extension Project (Staff Contact: Greg Armendariz, 586-3317)**

Background: The extension of the Bay Area Rapid Transit (BART) system into Santa Clara County is being implemented by VTA's Silicon Valley Rapid Transit Program. The first stage is a two-station (Milpitas and Berryessa) extension of approximately ten miles from BART's

planned Warm Springs station in Alameda County to VTA's planned Berryessa Station in the City of San Jose. This initial segment has been identified as the Silicon Valley Berryessa Extension (SVBX) Project.

On September 10, 2010, the City and VTA executed a Master Agreement, which creates a cooperative frame work between VTA and the City, for the design and construction of the BART line extension through Milpitas. This agreement allows for reimbursement of City expenses for a variety of coordination efforts, including but not limited to: design approval and inspection for City facilities, encroachment permit oversight, easements, utility maintenance operations, and resolution of construction issues.

The Master Agreement was executed prior to determination of the final configuration for Piper Drive. Amendments of the Master Agreement were therefore specifically anticipated in the Master Agreement to address the final design configuration and specific issues to be addressed by VTA in the design and construction of Piper Drive.

Amendment No. 2 addresses several major elements of the BART related work on Piper Drive, driven by relocation of all the existing City and Santa Clara Valley Water District utilities, to make room for new private utilities, and the final street improvements of Piper Drive, including:

- Final reconstruction of Piper Drive roadway improvements, and exemptions to the Transit Area Specific Plan standards, due to the heavy congestion of utilities underlying future landscape areas.
- City assistance and approval of a waiver request by VTA, from California Department of Public Health for temporary water and sewer installations. These temporary locations are non-compliant with State regulations, due to VTA not yet having acquired the necessary purchase of land strips on the easterly edge of Piper Drive, in order to accommodate the relocated water and sewer pipe systems with State compliant distance separations between these two utilities. The waiver is granted on the condition that VTA commits to acquisition of the necessary rights of way as well as replacing these utilities to their permanent compliant locations by December 31, 2013.
- The protection of the City's property rights, as VTA undertakes the relocation of all these utilities through several contracts, in light of the fact that the underlying property of Piper Drive is owned by Union Pacific Railroad, and the City has a roadway easement for Piper Drive. VTA agrees to provide the City with indemnification protection, for any and all losses and threats related to the BART work.
- Lastly, Amendment No. 2 has provisions requiring VTA to maintain and/or restore the City's roadway easement and utility rights, through VTA's property negotiations with Union Pacific Railroad.

A copy of the draft Amendment No. 2 is in the Council agenda packet.

Fiscal Impact: None.

Recommendation: Authorize the City Manager to execute Amendment No. 2 to the Master Agreement with the Santa Clara Valley Transportation Authority relating to the Silicon Valley Rapid Transit Program Berryessa Extension Project.

- * 26. **Approve the Ranch Drive Improvement Plans, and Authorize the City Manager to Execute a Permittee Dedication and Improvement Agreement, and a Stormwater Management Facilities Operation and Maintenance Agreement for the Wal-Mart Expansion, Project No. 2525 (Staff Contact: Fernando Bravo, 586-3328)**

Background: On April 19, 2011, the City Council adopted the Milpitas Commercial Specific Plan (Ordinance No. 38.799), allowing Wal-Mart to submit construction documents for expansion of its facility at 301 Ranch Drive. Staff has reviewed and recommends approval of the

public improvement plans for Ranch Drive, which includes pedestrian flashing beacons, signing and striping, and concrete median island. Staff recommends Council to authorize the City Manager to execute agreements with Wal-Mart for Permittee Dedication and Improvement and Stormwater Management Facilities Operation and Maintenance.

Fiscal Impact: None.

Recommendations:

1. Approve the Ranch Drive improvement plans.
2. Authorize the City Manager to execute the Permittee Dedication and Improvement Agreement.
3. Authorize the City Manager to execute the Stormwater Management Facilities Operation and Maintenance Agreement.

* 27. **Approve Amendments to the City Manager's Employment Agreement (Staff Contact: Tom Williams, 586-3050)**

Background: On November 15, 2011, the City Council in closed session considered an amendment to the terms of the agreement for the City Manager's employment, as provided on the amendment document included in the agenda packet.

Recommendation: Approve the first amendment to the employment agreement with the Milpitas City Manager.

* 28. **Authorize the City Manager to Execute Amendment No. 1 to the Recreation Services Agreement with Barry Poole for Tennis Instruction (Staff Contact: Chris Schroeder, 586-3161)**

Background: On September 18, 2011 the City of Milpitas entered into an agreement with Barry Poole to provide certified personnel, instruction, and supplies for tennis classes and camps. Due to the unanticipated popularity and high enrollment, approval is requested to extend the agreement through June 30, 2012 and to increase the total compensation by \$19,000 from \$19,900 to a total not-to-exceed amount of \$38,900. All other provisions of the Agreement shall remain in full force and effect.

Recommendation: Authorize the City Manager to execute Amendment No. 1 to the Recreation Services Agreement with Barry Poole for tennis instruction.

* 29. **Award the Bid and Authorize the City Manager to Execute a Contract with West Valley Construction Company, Inc. for On-Call Sidewalk, Curbs and Gutters Repair and Replacement at Various City of Milpitas Sites for the Annual Not-to-Exceed Amount of \$150,000 (Staff Contact: Chris Schroeder, 586-3161)**

Background: Purchasing worked with Street Maintenance and Engineering to develop a bid for On-Call Sidewalk, Curbs and Gutters Repair and Replacement at various City sites. The bid was priced on dollar per applied square foot and was based on fourteen Standard Engineering drawings for sidewalks, curbs and gutters. The contract is for \$150,000 per year for a one year period with four additional one year renewal options. The Bid was released on October 14 and advertised on the City website, on Public Purchase, in The Blue Book, on McGraw-Hill Construction Report, the iSqFt Planroom, the Construction Bidboard, and the local newspaper. Three vendors responded. The following is a recap based on the total average cost per applied square foot for all fourteen drawings. Historically, at least 95% of the work was done during normal time, Monday through Friday, from 8 am to 5 pm.

<u>Bidder</u>	<u>Normal Time</u>	<u>Premium Time</u>
West Valley Construction Company, Inc.	\$23.00	\$38.00
Weber Tractor Service	\$31.50	\$35.93
JJR Construction, Inc.	Nonresponsive	

Fiscal Impact: None. There are sufficient funds in CIP project number 4254 - Sidewalk Replacement 2011 for this service.

Recommendation: Award the bid and authorize the City Manager to execute a contract with West Valley Construction Company, Inc. for on-call sidewalk, curbs and gutters repair and replacement at various City of Milpitas sites for the annual not-to-exceed amount of \$150,000.

XXI. ADJOURNMENT

NEXT CITY COUNCIL MEETING:

TUESDAY, JANUARY 3, 2012