



**MILPITAS CITY COUNCIL
MEETING AGENDA
TUESDAY, FEBRUARY 21, 2012**

**6:00 P.M. (CLOSED SESSION) • 7:00 P.M. (PUBLIC BUSINESS)
455 E. CALAVERAS BLVD, MILPITAS, CA**

SUMMARY OF CONTENTS

- I. CALL TO ORDER/ROLL CALL by the Mayor (6:00 p.m.)**
- II. ADJOURN TO CLOSED SESSION OF CITY COUNCIL**
- 1) CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**
Pursuant to CA Government Code Section 54956.9(c)
Two cases of anticipated litigation with City as Plaintiff
- 2) CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**
Pursuant to CA Government Code Section 54956.9(a)
County of Santa Clara v. City of Milpitas, et al, San Mateo County Superior Court case no. CIV 499976
- III. CLOSED SESSION ANNOUNCEMENTS:** Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote or abstention of each member present
- IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)**
- V. INVOCATION** Councilmember Giordano invited Paul Mayes, Christ Community Church
- VI. APPROVAL OF COUNCIL MEETING MINUTES – February 7, 2012**
- VII. SCHEDULE OF MEETINGS – COUNCIL CALENDARS for February and March 2012**
- VIII. PRESENTATIONS**
- Commend Artist of the Year – *Bill Hare*
 - Proclaim *Tobacco Use Prevention Month* for February 2012
 - Proclaim Friday, February 17, 2012 as Celebration for Paul Robeson Exhibit at the Milpitas Public Library
- IX. PUBLIC FORUM**
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- Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to three minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.
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- X. ANNOUNCEMENTS**
- XI. ANNOUNCEMENT OF CONFLICT OF INTEREST**
- XII. APPROVAL OF AGENDA**

XIII. CONSENT CALENDAR (Items with asterisks*)

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. **Receive Progress Report from a Representative of the Pacific Gas & Electric Company on the Gas Transmission Lines in Milpitas (Staff Contacts: Greg Armendariz, 586-3317 and Brian Sturdivant, 586-2811)**
2. **Receive Budget Update from the Milpitas City Manager (Staff Contact: Tom Williams, 586-3050)**

XV. REPORTS OF MAYOR AND COMMISSIONS

- * 3. **Consider Mayor's Recommendation for Appointment of Staff Alternate to the Santa Clara Valley Water District Water Commission (Contacts: Mayor Esteves, 586-3051 and Kathleen Phalen, 586-3345)**
- * 4. **Consider Mayor's Recommendations for Appointments to Three Milpitas Commissions (Contact: Mayor Esteves, 586-3029)**
- * 5. **Consideration of Request by Library Advisory Commission for \$2,500 for Annual Essay Contest (Staff Contact: Sheldon Ah Sing, 586-3278)**
6. **Receive Report and Adopt the 2012 Telecommunications Master Plan (Contact: Councilmember Polanski, 586-3024)**

XVI. NEW BUSINESS

7. **Receive Report on the Santa Clara County Express Lane Program (Staff Contact: Steve Chan, 586-3324)**
- * 8. **Receive the Monthly Economic Development Report (Staff Contact: Diana Barnhart, 586-3059)**
9. **Receive an Update on Santa Clara Valley Transportation Authority's Rapid Transit (BART) Extension Project (Staff Contact: Greg Armendariz, 586-3317)**

XVII. ORDINANCES

10. **Waive Reading and Adopt Urgency Ordinance No. 262.7 Amending the Open Government Ordinance to Remove the Barrier to Application of the "Balancing Test" Allowed Under the Public Records Act (Staff Contact: Michael Ogaz, 586-3040)**
- * 11. **Waive the Second Reading and Adopt Ordinance No. 38.802 Establishing a Moratorium on Conversions of Certain Industrial and/or Commercial Zones to Residential Zones (Staff Contact: Michael Ogaz, 586-3040)**

XVIII. RESOLUTIONS

- 12. **Adopt a Resolution Declaring a Fiscal Emergency for Purposes of Placing a General Tax Measure for Voter Approval on the Ballot in June of 2012 (Staff Contact: Tom Williams, 586-3050)**
- * 13. **Adopt a Resolution Granting Initial Acceptance and Reducing Performance Bond for Street Resurfacing 2011 & 2012 Ranch Drive, Projects No. 4255 and No. 4261 (Staff Contact: Steve Erickson, 586-3301)**

XIX. CONTRACTS

- * 14. **Authorize the Execution of a Subdivision Improvement Agreement and Related Infrastructure Documents, Approve Final Map (Tract 10087) and Plans, and Approve the Encroachment Permit Agreement for Coyote Creek Townhomes, Project No. 2740 (Staff Contact: Fernando Bravo, 586-3328)**
- * 15. **Authorize City Manager to Execute Amendment No. 2 to the Agreement with CDM Smith, Inc. for Solid Waste Program Support (Staff Contact: Kathleen Phalen, 586-3345)**
- * 16. **Authorize Execution of a Permittee Dedication and Improvement Agreement, Stormwater Management Facilities Operation and Maintenance Agreement, and Approve Plans for Median Improvements, Project No. 1145 (Staff Contact: Fernando Bravo, 586-3328)**
- * 17. **Approve a Budget Appropriation for the Amendment to the Agreement with RMC Water and Environment, Project No. 4265 (Staff Contact: Greg Armendariz, 586-3317)**

XX. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, MARCH 6, 2012 AT 7:00 P.M.**

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/Public Art Committee (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. UNFINISHED BUSINESS

1. **Receive Progress Report from a Representative of the Pacific Gas & Electric Company on the Gas Transmission Lines in Milpitas (Staff Contacts: Greg Armendariz, 586-3317 and Brian Sturdivant, 586-2811)**

Background: PG&E staff will provide a verbal progress report on the Pipeline Safety Enhancement Plan (PSEP). The PSEP includes the pipeline testing work completed in 2011 as well as upcoming work in 2012 through 2014. The report will include information on the PG&E gas transmission lines in Milpitas and the Milpitas PG&E gas terminal. This progress report will also include an update on continued collaboration and training with Milpitas first responders.

Fiscal Impact: None.

Recommendation: Receive progress report from PG&E staff.

2. **Receive Budget Update from the Milpitas City Manager (Staff Contact: Tom Williams, 586-3050)**

Background: On December 29, 2011, the State of California Supreme Court upheld ABx1 26 and ordered elimination of all redevelopment agencies (RDA) effective February 1, 2012. The dissolution of the Milpitas Redevelopment Agency significantly impacts the City's General Fund budget and funding for various programs and infrastructure improvements within the City. Unfortunately, the actions by the Governor and the decision by the State Supreme Court have resulted in the most severe and worst possible scenario for cities. The City Manager recommended to the City Council a combination of several budget strategies to close the gap.

As a result of direction received from the City Council on February 7, 2012, the management team has requested that both the IAFF Local 1699 and the Milpitas Police Officers Association (MPOA) agree through amendments of existing agreements to maintain current vacancies within each unit they represent. This includes four vacancies in the Fire Department, with the caveat that minimum staffing requirements would be waived; and includes five vacancies in the Police Department consisting of three patrol officers, a dispatcher and a records clerk. If agreed upon, these savings total \$722,184 and \$766,860 respectively, with a grand total of \$1,489,044. According to discussions with the two unions, it is anticipated that the City would receive an answer within the next 30 to 45 days.

In addition, two immediate budget reduction items proposed and still awaiting action were the reduction in library hours (close Monday and Tuesday evening) and the cancellation of the 4th of July event this year. These proposed savings total \$428,000 and \$75,000.

Fiscal Impact: To be determined.

Recommendation: Move to eliminate additional library hours effective immediately and cancel the FY 2012-13 4th of July, 2012 special event celebration in Milpitas.

XV. REPORTS OF MAYOR AND COMMISSIONS

- * 3. **Consider Mayor's Recommendation for Appointment of Staff Alternate to the Santa Clara Valley Water District Water Commission (Contacts: Mayor Esteves, 586-3051 and Kathleen Phalen, 586-3345)**

Background: For administrative efficiency, the Santa Clara Valley Water District Water Commission requests the appointment of a City staff alternate for service on the Water

Commission. Currently, Councilmember Armando Gomez serves as the elected official representative for Milpitas on that Commission. The City staff level alternate would serve on the Water Commission only in the event of scheduling conflicts or other situations that would bar the elected official from serving at a particular meeting.

City staff recommends that Assistant City Engineer Kathleen Phalen be recommended by the Mayor and approved by the Council. The Assistant City Engineer is familiar with, and qualified for, this assignment. The term of service would end in February 2013, at the same time as the termination of the elected official appointment to the Water Commission.

Fiscal Impact: None.

Recommendation: Per Mayor's recommendation, move to appoint Kathleen Phalen as the staff alternate to the Santa Clara Valley Water District Water Commission.

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

Background: Mayor Esteves recommends the following citizens be appointed to three Milpitas commissions.

Community Advisory Commission

Newly appoint Eva Ferguson as Alternate No. 4 to a term that expires in January 2014.

Economic Development Commission

Newly appoint Dinna Bayangos as Alternate No. 2 to a term that expires in April 2012.

Telecommunications Commission

Appoint Debra Lax (current Alternate No. 1) as a regular member to a term that expires in January 2013.

Appoint Sukhi Singh (current Alternate No. 2) as Alternate No. 1 to a term that expires in January 2013.

Newly appoint Thai Pham as Alternate No. 2 to a term that expires in January 2014.

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

* **5. Consideration of Request by Library Advisory Commission for \$2,500 for Annual Essay Contest (Staff Contact: Sheldon Ah Sing, 586-3278)**

Background: The Library Advisory Commission is planning for an on-the-spot essay writing contest to be held on April 14, 2012 at the Milpitas Public Library in celebration of National Library Week. The participants will write the essays at the event and in turn be judged on the same day. The judges would include language arts teachers from Milpitas schools. The winners of the contest would be awarded prizes (Kindle Fires). The Commission requests \$2,500 to purchase the prizes, pay for event decorations and refreshments. Detailed information about the contest is included with the agenda packet materials.

Fiscal Impact: There is no fiscal impact associated with this action. There is sufficient money in the Community Promotions line item budget under the City Council, leaving \$5,250 left in the budget for this fiscal year.

Recommendation: Appropriate \$2,500 to the Library Advisory Commission budget to purchase prizes, event decorations and refreshments.

6. Receive Report and Adopt the 2012 Telecommunications Master Plan (Contact: Councilmember Polanski, 586-3024)

Background: In 1995, the City developed and adopted its first Telecommunications Master Plan. Since that time, the Telecommunications Commission has made periodic reviews and updates of the Master Plan. These plans have guided the implementation and management of technology projects within the City. The 2012 plan is an update to the 2007 plan and continues the five year plan cycle. The Commission will briefly review the accomplishments of past Master Plans and present the 2012 plan for Council consideration.

Fiscal Impact: None.

Recommendation: Receive the Telecommunication Commission report and adopt the 2012 Telecommunications Master Plan.

XVI. NEW BUSINESS

7. Receive Report on the Santa Clara County Express Lane Program (Staff Contact: Steve Chan, 586-3324)

Background: Since 2008 the Santa Clara Valley Transportation Authority (VTA) has been implementing the Silicon Valley Express Lanes Program to provide congestion relief through more efficient use of existing roadways. The Express Lanes program is a countywide conversion of 180 miles of existing High Occupancy Vehicle (HOV or carpool) lanes to High Occupancy Toll (HOT) lanes. This allows solo drivers the option to use the lanes for a fee and continue to permit carpool vehicles to use the lanes free of charge. The goal is to help provide reliable travel options to Bay Area commuters and maximize usage and capacity in these lanes during commute hours. VTA will open the new express lanes along the State Route 237 and Interstate 880 corridor beginning in February 27, 2012.

Fiscal Impact: None.

Recommendation: Receive a report from staff on Santa Clara County Express Lane Program.

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

Background: McCarthy Ranch: The Torgan Group of Toronto, Canada has recently completed its acquisition of the McCarthy Ranch Marketplace and is working with local consultants to facilitate the development review process. The Torgan Group developed the Pacific Mall in Toronto which is billed as “The Largest Chinese Mall in North America.” They intend to create a similar mall at the Marketplace along with a hotel. Staff has been working with the new ownership group on and off for over a year and it is exciting to see the property purchase come to fruition.

Serra Center: Staff met recently with the new team for Serra Center ownership group as they begin to ramp up a phased development project. While the eventual redevelopment is envisioned to be a modern shopping center, the owners have moved away from a high-rise residential concept to units architecturally similar to the Granada neighborhood along Junipero Drive.

SVUnwired: Upgrades to the free outdoor wireless service is complete and the usage of the system is increasing daily. In February 2010, daily use increased to over 1,000 unique users. In comparison, daily users increased to nearly 3,000 in February 2012. Users can best access the free service outside their home, but the signal can reach into the home if users purchase a modem to direct the signal to the interior.

R&D Inventory: Cassidy Turley Commercial Real Estate Services (CT) recently released its 2011 4th Quarter R&D report for Silicon Valley. All submarkets showed leasing improvements, most notably in the west County as Apple, Google, Facebook and LinkedIn all expanded their

operations in Cupertino, Sunnyvale, Mountain View and Santa Clara. Milpitas has seen, as previously reported, its vacancy rate begin to decline as companies relocating from these cities fill local long term vacancies.

The CT report states “Make no mistake about it, this tech boom has legs.” This is a reflection that the last “boom” was driven by venture capital and startup firms, while the current expansion is led by “...real businesses, with real products and real profits...”

Milpitas’ R&D vacancy rate has declined by 20.2% from 2Q2011 to 17.5% in 4Q2011. This reduction reflects occupancies of Zollner Electronics, Nanolabs and E2O.

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

Recommendation: Receive the monthly economic development report.

9. Receive an Update on Santa Clara Valley Transportation Authority’s Rapid Transit (BART) Extension Project (Staff Contact: Greg Armendariz, 586-3317)

Background: Santa Clara VTA staff will provide an oral report on the status of the BART project, including project schedule and funding. The report will also include a “look-ahead” of project activities within Milpitas over the next 12 to 24 months. These include upcoming informational Community Meetings, advance utility construction work, and the closure of Kato Road in Fremont, which will affect Dixon Landing Road.

Fiscal Impact: None.

Recommendation: Receive progress report from staff on the BART Extension project of the Santa Clara Valley Transportation Authority.

XVII. ORDINANCES

10. Waive Reading and Adopt Urgency Ordinance No. 262.7 Amending the Open Government Ordinance to Remove the Barrier to Application of the “Balancing Test” Allowed Under the Public Records Act (Staff Contact: Michael Ogaz, 586-3040)

Background: The California Public Records Act (PRA) acknowledges the existence of competing interests regarding the propriety of producing records kept by a public entity such as the City. Some documents, such as the blueprints and plans of potential targets of terrorist attacks, investigative reports of the Police Department or security files that contain data sensitive to the security of staff and public buildings, are subject to a weighing process under the PRA whereby the public interest in disclosure is considered against the public interest in preventing access to the information, with the latter often relating to concerns for the safety or security of citizens and first responders. Sections I-310-3.70(f) and (h) of the Milpitas Municipal Code prohibit the City from utilizing this PRA process of weighing the competing interests of the public when responding to records requests.

The City is currently engaged in litigation regarding the propriety of producing certain records and has recently received a ruling that security video recordings and key card data must be produced in response to a Public Records Act request. In its ruling the Court mentioned that the public interest in withholding the information would have been considered except that the Municipal Code prevents the City from doing that. The citizens of Milpitas have a significant interest in maintaining the security of the City’s buildings and public places, in protecting the integrity of Police investigative files, and generally preserving the public peace, health and safety. The possibility of disclosure of sensitive materials that would otherwise be protected under the Public Records Act is immediately threatened by the order of the Superior Court which, as noted, was hamstrung in rendering a decision by the prohibition against balancing the public interest in withholding such documents.

This Ordinance amendment is intended to restore the balancing test provided under the Public Records Act and allow it to be utilized by the City in response to any Public Records Act request received on or after February 7, 2012, and to that extent is intended to be retroactive to requests made on or after that date. Its immediate passage is necessary for the immediate preservation of the public health and safety in order to protect sensitive material from disclosure which could be used to undermine and threaten the security of municipal buildings and facilities, and the safety of members of the public, employees and elected officials. As an urgency ordinance, this Ordinance would become immediately effective upon adoption and requires a 4/5 vote of the City Council.

Fiscal Impact: None.

Recommendations:

1. Waive the reading beyond the title of Ordinance No. 262.7.
2. Adopt Ordinance No. 262.7 on an urgency basis to become effective immediately.

- * **11. Waive the Second Reading and Adopt Ordinance No. 38.802 Establishing a Moratorium on Conversions of Certain Industrial and/or Commercial Zones to Residential Zones (Staff Contact: Michael Ogaz, 586-3040)**

Background: On February 7, 2012, the City Council introduced non-urgency Ordinance 38.802, which establishes a moratorium on the conversion of certain industrial and/or commercial zones to residential zones. No changes have been made since the first reading.

Fiscal Impact: There is no immediate fiscal impact at this time.

Recommendations:

1. Move to waive the second reading of Ordinance No. 38.802.
2. Adopt Ordinance No. 38.802, establishing a moratorium on the conversion of certain industrial and/or commercial zones to residential zones.

XVIII. RESOLUTIONS

- 12. Adopt a Resolution Declaring a Fiscal Emergency for Purposes of Placing a General Tax Measure for Voter Approval on the Ballot in June of 2012 (Staff Contact: Tom Williams, 586-3050)**

Background: As a component of a budget balancing strategy, one option available to the City Council is to propose a new general tax that could raise revenue for local needs that has otherwise been diverted by State actions. Any revenue tax measure requires either a two-thirds vote or a simple majority vote of the electorate. Since the upcoming election on June 5, 2012 is not a regularly scheduled municipal election for the City of Milpitas, the City Council must adopt a resolution declaring a fiscal emergency by unanimous vote to obtain a simple majority vote on a general tax. If not, a two-thirds vote would be required in June.

Adopting the resolution of Fiscal Emergency does not guarantee a revenue tax measure will be placed on the ballot. It only provides for the necessity of a simple majority vote if a general tax were to appear on the June ballot. Results of the survey of registered voters and future Council action would be the determining factor for placing a revenue tax measure on the ballot in June or other date. The City has reduced its structural deficit from \$12 million to \$2.4 million but faces detrimental crisis as of February 1, 2012, as a result of the elimination of Redevelopment, which reduces the revenue to the City of Milpitas by \$39 million annually.

Fiscal Impact: None. There is no direct fiscal impact to declaration of a fiscal emergency.

Recommendation: Adopt a resolution declaring a fiscal emergency, by unanimous vote of the City Council.

- * 13. **Adopt a Resolution Granting Initial Acceptance and Reducing Performance Bond for Street Resurfacing 2011 & 2012 Ranch Drive, Projects No. 4255 and No. 4261 (Staff Contact: Steve Erickson, 586-3301)**

Background: The City Council awarded the project to Pavex Construction on September 20, 2011 for pavement repairs and resurfacing on Ranch Drive, and pavement repairs at the Milpitas Sport Center parking lot, the Main Fire Station parking lot, and a section along South Main Street. The project was successfully completed on time and within budget, and staff recommends the City Council adopt a resolution granting initial acceptance of the project, and authorize the reduction of the contractor's faithful performance bond to \$78,325.21, which is 10% of the final contract value.

Fiscal Impact: None.

Recommendation: Adopt a resolution granting initial acceptance of the Street Resurfacing 2011 and 2012 Ranch Drive, Projects No. 4255 and No. 4261, subject to a one year warranty period and reduction of the faithful performance bond to \$78,325.21.

XIX. CONTRACTS

- * 14. **Authorize the Execution of a Subdivision Improvement Agreement and Related Infrastructure Documents, Approve Final Map (Tract 10087) and Plans, and Approve the Encroachment Permit Agreement for Coyote Creek Townhomes, Project No. 2740 (Staff Contact: Fernando Bravo, 586-3328)**

Background: On January 6, 2009, the City Council approved the Tentative Map, Planned Unit Development and Site Development Permit for the Coyote Creek Townhomes Project, 285 condominium units located off 601 Murphy Ranch Road. The development has on-site private streets and related private utilities. Public improvements consist of City utility connections and sidewalk frontage improvements at Murphy Ranch Road. The developer submitted the final map and public improvement plans and executed the subdivision improvement agreement. City Engineering staff reviewed the documents and found those satisfy the City's requirements for this project, and requests approval, subject to satisfaction of the City Engineer.

The development as designed requires that private improvements be constructed within a portion of the newly constructed public Cerano Park, improvements. The park will be accepted in the near future. The private improvements to be constructed in this area include PG&E electrical vault and conduits and private water service pipeline. This project modification will not impact the park use. An encroachment agreement is required to accommodate these private utility improvements to serve the project.

On February 14, 2012, the Rules Subcommittee was scheduled to review a list of suggested street names for the project, however a quorum was not met for the meeting. Councilmember Giordano, Chair of the Rules Subcommittee, did review the list and recommended inclusion of the names on the Final Map. Recommended street names, as shown in Attachment 5, were selected from names of Milpitas veterans not previously used for street names. The public improvements plans are available for review in the office of the City Engineer.

Fiscal Impact: None. All costs associated with this project will be paid for by the developer. The Developer has deposited \$600,000 to the Private Job account for all project costs.

Recommendations:

1. Approve and authorize the execution of a Subdivision Improvement Agreement.

2. Approve all of the following: Stormwater Management Facilities Operation and Maintenance Agreement; Final Map (Tract 10087); Encroachment Permit Agreement, Public Improvement Plans 2-1151, and street names for Project No. 2740.

*** 15. Authorize City Manager to Execute Amendment No. 2 to the Agreement with CDM Smith, Inc. for Solid Waste Program Support (Staff Contact: Kathleen Phalen, 586-3345)**

Background: The City has a contract with CDM Smith, Inc. (formerly known as Camp Dresser & McKee) to review Allied Waste's annual reimbursement request to the City for extraordinary regulatory costs not included in the base rate of its contract with the City. Subtitle D of the Federal Resource Conservation and Recovery Act, enacted after the contract base rate was established, requires landfill operators to monitor landfill safety, provide proper capture and treatment of wastewater leachate, and monitor wildlife control and facility design. Allied is ready to submit its 2010 regulatory costs for the Newby Island landfill, at which time staff will require CDM Smith's technical expertise review to verify the accuracy of the claims. The evaluation process includes a review of Allied's documentation, project meetings with City and Allied staff, and a report of findings. The validated extraordinary expenses will be incorporated into a future rate increase. As review of the 2010 submission is not yet funded, staff has negotiated an agreement amendment with CDM Smith in an amount not to exceed \$8,710 for this work, which is consistent with the cost for previous annual reviews of these reimbursement requests. The amendment, if approved, will bring the total contract not-to-exceed value to \$38,620.

Fiscal Impact: None. Sufficient funds are available in the FY 2011-12 solid waste budget.

Recommendation: Authorize the City Manager to execute amendment No. 2 to the agreement with CDM Smith, Inc. for solid waste program support.

*** 16. Authorize Execution of a Permittee Dedication and Improvement Agreement, Stormwater Management Facilities Operation and Maintenance Agreement, and Approve Plans for Median Improvements, Project No. 1145 (Staff Contact: Fernando Bravo, 586-3328)**

Background: On November 16, 2010, the former Redevelopment Agency/City Council approved an amendment to an Owner Participation Agreement for the Western Pacific Housing Inc. (Paragon) Condominiums that provided in part for the provision of "In Lieu Services." Under this amendment, the developer agreed to perform median landscaping improvements in lieu of selling twenty (20) residential units at the project to households whose gross income does not exceed Moderate Income (in lieu services). The median improvements are on South Main Street between Montague Expressway and just north of Cedar Way. This project will enhance and close the gap in completing the vision of the Main Street Plan Line Study. Plans have been prepared by the Developer's consultant in line with the Main Street Plan Line Study. The scope of work includes demolition, new median curb, signing and striping, signs, loop detectors, median street lighting, median landscaping and irrigation, and three banner poles. The "In Lieu Service" is for amount not to exceed \$670,000. The Engineer's Estimate for construction is \$520,000.

The following documents have been reviewed and staff recommends approval, subject to the satisfaction of the City Engineer:

1. Permittee Dedication and Improvement Agreement
2. Stormwater Management Facilities Operation and Maintenance Agreement
3. South Main Street Median Improvement Plan No. 2-1145

The City is the successor Agency to the former Milpitas Redevelopment Agency.

Fiscal Impact: None.

Recommendations:

1. Authorize the City Manager to execute a Permittee Dedication and Improvement Agreement.
2. Approve Stormwater Management Facilities Operation and Maintenance Agreement; and
3. Approve Improvement Plan No. 2-1145 for South Main Street Median Improvements.

*** 17. Approve a Budget Appropriation for the Amendment to the Agreement with RMC Water and Environment, Project No. 4265 (Staff Contact: Greg Armendariz, 586-3317)**

Background: On August 16, 2011 , the City Council approved Amendment No. 1 to the engineering consulting agreement with RMC Water and Environment for engineering support on the Santa Clara Valley Transportation Authority (VTA) BART extension project and other various City capital improvement projects. Funds for the BART extension project are recommended to be appropriated from a holding account into the BART Extension Project account which is reimbursable by the VTA. A budget appropriation request in the amount of \$233,296 is included in the Council packet.

Fiscal Impact: None. Engineering support for the BART extension project is fully reimbursable by VTA. There is sufficient funding in the City's various capital improvement projects to provide engineering support.

Recommendation: Approve a budget appropriation for the not-to-exceed amount of \$233,296 for the RMC Water and Environment Consultant Agreement, Project No. 4265.

XX. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, MARCH 6, 2012 AT 7:00 P.M.**