



**MILPITAS CITY COUNCIL MEETING AGENDA
TUESDAY, MAY 1, 2012**

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 SESSION**
 - 1) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

Pursuant to CA Government Code §54956.9 (a)
In Re Margie Gonzales, Workers Compensation Appeals Board, Case No. ADJ7699680
 - 2) CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Pursuant to CA Government Code §54956.9 (b), (c)
City of Milpitas as Plaintiff or Defendant
 - 3) CONFERENCE WITH LEGAL COUNSEL-EXISTING LITIGATION**

Pursuant to CA Government Code Section 54956.9(a)
Mendizabal v. City, PERB Case No. SF-CE-679-M
 - 4) CONFERENCE WITH LABOR NEGOTIATORS - COLLECTIVE BARGAINING**

Pursuant to CA Government Code §54957.6 City Negotiator: Carmen Valdez
Employee Groups: Milpitas Supervisors Association (MSA), Milpitas Employees Association (MEA),
Mid-Management/Confidential group, Milpitas Professional and Technical Group (ProTech), Milpitas
Police Officers Association (MPOA), International Association of Fire Fighters (IAFF)
Under Negotiation: Wages, Hours, Benefits, and Working Conditions
- 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 (Vice Mayor McHugh)**
- VI. APPROVAL OF COUNCIL MEETING MINUTES – April 17, 2012**
- VII. SCHEDULE OF MEETINGS – COUNCIL CALENDAR for May 2012**
- VIII. PRESENTATION – Proclaim May 2012 as *Building and Safety Month***
- 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 (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. Approve the New Field Allocation Process and Priorities as Recommended by the Parks, Recreation and Cultural Resources Commission (Staff Contact: Jaime Chew, 586-3234)**
- 2. Review Draft 2012-2017 Capital Improvement Program Report, and Provide Staff with Direction and Comments (Staff Contact: Greg Armendariz, 586-3317)**
- * 3. Receive the April 2012 Odor Control Report (Staff Contact: Kathleen Phalen, 586-3345)**

XV. REPORTS OF MAYOR AND SUBCOMMITTEE

- * 4. Consider Mayor's Recommendation for Re-appointments to the Economic Development Commission (Contact: Mayor Esteves, 586-3029)**

Transportation and Land Use Subcommittee

- 5. Receive an Update on Future Regulation of Medical Marijuana Facilities (Staff Contact: Michael Ogaz, 586-3040)**

XVI. NEW BUSINESS

- * 6. Receive the City of Milpitas Investment Portfolio Status Report for the Quarter Ended March 31, 2012 (Staff Contact: Emma Karlen, 586-3145)**

XVII. ORDINANCE

- 7. Waive the First Reading and Introduce Ordinance No. 227.5 Amending Chapter 215 Title V of the Milpitas Municipal Code Related to Prohibiting Tobacco Smoking in Certain Areas (Staff Contact: Felix Reliford, 586-3071)**

XVIII. RESOLUTIONS

- * 8. Adopt a Resolution Directing Preparation of the Annual Engineer's Report for Landscaping and Lighting Maintenance Assessment District No. 95-1, McCarthy Ranch, Project No. 9474 (Staff Contact: Fernando Bravo, 586-3328)**
- * 9. Adopt a Resolution Directing Preparation of the Annual Engineer's Report for Landscaping and Lighting Maintenance Assessment District No. 98-1, Sinclair Horizon, Project No. 9489 (Staff Contact: Fernando Bravo, 586-3328)**
- * 10. Adopt a Resolution Authorizing an Interfund Loan Agreement with the City, Authorize the City Manager to Execute a Consulting Agreement with Economic & Planning Systems, Inc. for Updates to the Financing Plan of the Transit Area Specific Plan (TASP), and Approve a Budget Appropriation (Staff Contact: Greg Armendariz, 586-3317)**

XIX. BIDS AND CONTRACTS

- * 11. Award a Construction Contract to Bay Cities Paving and Grading, Inc. for Annual Street Resurfacing Projects, Milpitas Boulevard between Gibraltar Drive and Beresford Court, Projects No. 4255, No. 4261 and No. 3403, Approve a New Capital Improvement Program (CIP) Project, and Approve a Budget Appropriation for the Street Resurfacing Project 2013, Project No. 4268 (Staff Contact: Steve Chan, 586-3324)
- * 12. Authorize the City Manager to Execute Amendment No. 1 to the Recreation Service Agreement with Communication Academy for the Total Not-to-Exceed Amount of \$25,000 (Staff Contact: Chris Schroeder, 586-3161)
- * 13. Authorize the City Manager to Execute Amendment No. 1 to the Recreation Services Agreement with Noteworthy Music for the Total Not-to-Exceed Amount of \$30,000 (Staff Contact: Chris Schroeder, 586-3161)
- * 14. Approve Plans and Specifications and Authorize Advertisement for Bid Proposals for Park Renovation Project 2011 “Pathways” at Pinewood and Albert Augustine Jr. Memorial Parks, Project No. 5091 (Staff Contact: Steve Erickson, 586-3301)
- * 15. Approve a Budget Appropriation for the Sidewalk Replacement 2011, Project No. 4254 (Staff Contact: Greg Armendariz, 586-3317)
- * 16. Approve and Authorize the City Manager to Execute an Agreement with Schaaf & Wheeler, Consulting Civil Engineers, for the Minor Storm Drain Projects 2011-12, Project No. 3706, and Approve a Budget Appropriation (Staff Contact: Steve Erickson, 586-3301)
- * 17. Authorize the City Manager to Award a Construction Contract for Abel Street Transit Connection, Project No. 4260, Federal Project No. CML-5314 (003) (Staff Contact: Steve Erickson, 586-3301)

XX. ADJOURNMENT

**COUNCIL BUDGET HEARING SPECIAL MEETING
TUESDAY, MAY 8, 2012 AT 6:00 P.M.**

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, MAY 15, 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, 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 after initial distribution of the agenda packet are available for public inspection at the City Clerk's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, on website, and at Milpitas Library during normal business hours.

APPLY TO BECOME A CITY COMMISSIONER!

Current vacancies exist on the:

*Arts Commission/Public Art Committee (alternate)
Public Art Committee (one general member and one Alliance for the Arts member)
Community Advisory Commission (alternate)
Telecommunications Commission*

Applications are available online at www.ci.milpitas.ca.gov or at Milpitas City Hall.
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. Approve the New Field Allocation Process and Priorities as Recommended by the Parks, Recreation and Cultural Resources Commission (Staff Contact: Jaime Chew, 586-3234)

Background: At the request of the City Council, the field allocation process and priorities were brought before the Parks, Recreation and Cultural Resources Commission for discussion and community input for possible updating. At the March 5, 2012 and April 2, 2012 meetings, the PRCRC heard community input, had an open discussion and came to the following recommendations:

- 1) To change the current 5 priorities, specifically for field allocations, to the following 3 tiers:
 - **Tier 1:** Priority given to all programs that are administered by the City of Milpitas Recreation Services Division.
 - **Tier 2:** Priority given to the youth and sanctioned organizations and/or groups comprised of 75% Milpitas residents.
 - In order to get to the 75% Milpitas residency criteria PRCRC recommended staff to take a graduated 3 year approach to increasing the required percentage of residency—51% residents in 2012, 63% residents in 2013 and 75% residents in 2014.
 - **Tier 3:** Organizations and/or groups comprised of less than 75% Milpitas residents.
- 2) To allocate the fields to organizations and/or groups according to their previous three-year average of Milpitas residents.
- 3) To adhere to the following specifications:

Current specifications:

- The City will give field allocation priority to the sport in season.
- The City of Milpitas will pre-determine a calendar, per season, that will show a breakdown of field maintenance, and available fields and times for varying age groups.
- The City will continue to administer the Youth Sports User Fee of \$10 per player, per season, per sport.

New specifications:

- The City will allocate fields according to age groups appropriate for field usage.
 - Age appropriateness of the fields will be predetermined by the City.
- The current season's field allocation will be based on an average of Milpitas residency of the previous three years.
- For regular season play, it will be required that a Milpitas-based team be playing on the allocated field.
 - This does not apply for tournaments.

Fiscal Impact: None.

Recommendation: Approve the new field allocation process and priorities, as recommended by the Parks, Recreation and Cultural Resources Commission.

2. Review Draft 2012-2017 Capital Improvement Program Report, and Provide Staff with Direction and Comments (Staff Contact: Greg Armendariz, 586-3317)

Background: The Draft 2012-2017 Capital Improvement Program (CIP) document was prepared by staff. A copy was previously distributed with the Council's agenda packet. CIP

projects are arranged into six main categories: Community Improvements, Parks, Streets, Water, Sewer, and Storm Drain. The document includes a summary by categories, and individual proposed project descriptions. Previously funded projects are also summarized.

On March 22, 2012, the Draft 2012-2017 CIP document was reviewed by the Finance Subcommittee. The Parks, Recreation and Cultural Resources Commission reviewed the Parks projects on April 2, 2012, and recommend them for approval by Council. On April 11, 2012, the Planning Commission reviewed the Draft 2012-2017 CIP document and found it in conformance with the General Plan.

A staff presentation of the draft CIP highlights will be provided at the Council meeting. Based upon Council direction, the Draft CIP will be revised and prepared as the Preliminary CIP document, which will then be presented to Council at the May 8 budget hearing.

Fiscal Impact: None.

Recommendation: Review the Draft 2012-2017 Capital Improvement Program (CIP) and provide staff with direction and comments.

* **3. Receive the April 2012 Odor Control Report (Staff Contact: Kathleen Phalen, 586-3345)**

Background: From March 19 through April 15, 2012, the Bay Area Air Quality Management District (BAAQMD) received four odor complaints originating in Milpitas. All four complainants identified a garbage-related odor. As of the last Council update, the City's odor reporting website had received two 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, as are the best management practices being implemented by Allied Waste at the Newby Island facility.

Fiscal Impact: None.

Recommendation: Receive the April 2012 odor report.

XV. REPORTS OF MAYOR AND SUBCOMMITTEE

* **4. Consider Mayor's Recommendation for Re-appointments to the Economic Development Commission (Contact: Mayor Esteves, 586-3029)**

Background: Mayor Esteves recommends the following citizens be re-appointed to Milpitas Economic Development Commission as follows:

Re-appoint Chandru Bhambhra, representing residential real estate, to a new term to expire in April 2015, and re-appoint Dinna Bayangos as Alternate No. 1 to a term to expire in April 2014.

Recommendation: Consider the recommendation from the Mayor and move to approve two re-appointments to the Milpitas Economic Development Commission.

Transportation and Land Use Subcommittee

5. Receive an Update for Future Regulation of Medical Marijuana Facilities (Staff Contact: Michael Ogaz, 586-3040)

Background: Beginning in September 2011, the Transportation and Land Use Subcommittee began reviewing medical marijuana facilities. The concern of the Subcommittee was that in the event legislation would require these facilities, the City should have strict regulations in place. At the April 18, 2012 meeting of the Transportation and Land Use Subcommittee, the Subcommittee directed staff to update the City Council on appropriate parameters for future

regulation of medical marijuana facilities in the City of Milpitas. The reason for not proposing more definitive action, such as adoption of a specific ordinance regulating medical marijuana facilities, is that the courts are in conflict regarding the allowable limits of local regulation. Several ordinance structures are now before the California Supreme Court. A decision by the Court is expected this fall which should define the allowable boundaries of local regulation.

The purpose of bringing this forward now is to update the Council regarding the various components of a possible regulatory structure. Variations in ordinances abound, with some creating very demanding registration and permitting requirements, others relying heavily on zoning regulations to place marijuana facilities only in what are deemed compatible areas, and some which dictate the total number of facilities allowed in the jurisdiction and the scope of any ancillary uses permitted.

Fiscal Impact: Depends on whether accompanied by a revenue generating tax approved by voters. Generally fees are limited to reimbursement of actual expenses incurred in regulating these facilities.

Recommendation: Provide comment and feedback regarding the desired scope of a future ordinance regulating medical marijuana facilities in the City of Milpitas dependent upon California Supreme Court rulings.

XVI. NEW BUSINES

*** 6. Receive the City of Milpitas Investment Portfolio Status Report for the Quarter Ended March 31, 2012 (Staff Contact: Emma Karlen, 586-3145)**

Background: In compliance with the State of California Government Code and the City's Investment policy, the City of Milpitas Investment Report for the quarter ended March 31, 2012 is submitted for your review and acceptance.

The Portfolio Summary Report (copy included in the Council's agenda packet) provides a summary of the City's investments by type. It lists the par value, market value, book value, percentage of portfolio, term, days to maturity and the equivalent yields for each type of investment. The Portfolio Details Report provides the same information for each individual investment in the City's portfolio as of March 31, 2012.

As of March 31, 2012, the principal cost and market value of the City's investment portfolio was \$155,841,784 and \$156,604,633 respectively. When market interest rates increase after an investment is purchased, the market value of that investment decreases. Conversely, when market interest rates decline after an investment is purchased, the market value of that investment increases. If the investments are not sold prior to the maturity date, there is no market risk. Therefore, in accordance with the City's investment policy, all investments are held until maturity to ensure the return of all invested principal.

The City's effective rate of return for the period ended March 31, 2012 was 1.02%. The comparative benchmarks for the same period were 0.38% for LAIF (Local Agency Investment Fund) and 0.33% for the 12-month average yield of the 2 year Treasury Note. The weighted average maturity of the portfolio was 337 days.

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

Effective March 1, 2012 the City changed safekeeping bank services from Union Bank to The Bank of New York Mellon Trust Co. ("BNY Mellon) due to the more competitive pricing of

their services. The market values of the securities were provided by BNY Mellon. All the securities owned by the City are held in the trust department of BNY Mellon under the terms of a custody agreement.

Three charts are included with the agenda packet that show investment by maturity levels, comparison of the City's portfolio yields to other benchmark yields as well as a trend of the type of securities in the City's portfolio, weighted average maturity and average yield.

Fiscal Impact: None.

Recommendation: Receive the investment report for the quarter ended March 31, 2012.

XVII. ORDINANCE

7. Waive the First Reading and Introduce Ordinance No. 227.5 Amending Chapter 215 Title V of the Milpitas Municipal Code Related to Prohibiting Tobacco Smoking in Certain Areas (Staff Contact: Felix Reliford, 586-3071)

Background: At its meeting on March 27, 2012, the Transportation and Land Use Subcommittee reviewed a revised tobacco smoking ordinance, recommended amending the ordinance and forwarding this item to the full City Council. The amended ordinance would prohibit smoking tobacco in the following areas:

- All buildings owned or leased by the City, including City vehicles, and within 25 feet of entrances, exits, open windows and ventilation-intake systems of City owned or leased buildings.
- All playgrounds and Sports Facilities owned and operated by the City of Milpitas, including spectator areas and concession stands, and within 25 feet of City owned Playgrounds and Sports Facilities.
- Common areas of multi-unit residences.
- Dining areas.
- Places of employment.
- Service areas, which is any area that is designed to be used to receive a service.
- Hotels and motels

The proposed ordinance would be enforced by Milpitas Police Department on a complaint basis. Appropriate signs will need to be posted by the City and business community to inform the general public. Included in the Council's agenda packet is a copy of the draft ordinance and recent minutes of the Transportation and Land Use Subcommittee meetings.

Fiscal Impact: None.

Recommendations:

1. Waive the first reading beyond the title of Ordinance No. 227.5.
2. Introduce Ordinance No. 227.5.

XVIII. RESOLUTIONS

*** 8. Adopt a Resolution Directing Preparation of the Annual Engineer's Report for Landscaping and Lighting Maintenance Assessment District No. 95-1, McCarthy Ranch, Project No. 9474 (Staff Contact: Fernando Bravo, 586-3328)**

Background: Landscaping and Lighting Maintenance Assessment District No. 95-1 (LMD 95-1) provides for servicing and maintaining the public landscaping and additional lighting along North McCarthy Boulevard and the Gateway landscaping on Ranch Drive.

The Landscaping and Lighting Act of 1972, requires adoption of the subject resolution, the preparation of an annual engineer's report and its subsequent approval by the City Council following a public hearing (scheduled for June 19, 2012). Upon conclusion of the public hearing, the assessment for the work is added to the property tax bills for those property owners included within the boundaries of the district.

Fiscal Impact: None.

Recommendation: Adopt a resolution directing the preparation of the Annual Engineer's Report for LLMD No. 95-1 at McCarthy Ranch.

- * **9. Adopt a Resolution Directing Preparation of the Annual Engineer's Report for Landscaping and Lighting Maintenance Assessment District No. 98-1, Sinclair Horizon, Project No. 9489 (Staff Contact: Fernando Bravo, 586-3328)**

Background: Landscaping and Lighting Maintenance Assessment District (LMD) No. 98-1 provides for servicing and maintaining the public landscaping along Sinclair Frontage Road, Los Coches Creek and Berryessa Creek abutting the Sinclair Horizon residential subdivision. The Landscaping and Lighting Act of 1972, requires adoption of the subject resolution, the preparation of an annual engineer's report and its subsequent approval by the City Council following a public hearing (scheduled for June 19, 2012). Upon conclusion of the public hearing, the assessment for the work is added to the property tax bills for those property owners included within the boundaries of the district.

Fiscal Impact: None.

Recommendation: Adopt a resolution directing the preparation of the Annual Engineer's Report for LLMD No. 98-1 at Sinclair Horizon.

- * **10. Adopt a Resolution Authorizing an Interfund Loan Agreement with the City, Authorize the City Manager to Execute a Consulting Agreement with Economic & Planning Systems, Inc. for Updates to the Financing Plan of the Transit Area Specific Plan (TASP), and Approve a Budget Appropriation (Staff Contact: Greg Armendariz, 586-3317)**

Background: The Milpitas Transit Area Specific Plan (TASP), approved by Council on June 3, 2008, provides for General Plan land-use changes to allow for re-zoning of commercial/industrial areas around the future Bay Area Rapid Transit (BART) Milpitas station at Montague Expressway and Capitol Avenue. New development will transform this area to a vibrant Transit Oriented Development (mixed use medium/high density residential with retail and commercial).

The TASP plan identified infrastructure needs to allow for this land use transformation. It also provides a financing plan which established a development impact fee and a Community Facilities District, and relied upon the existing Redevelopment Agency (RDA) tax increment funds, to provide and create economic development opportunities.

With the 2008 great recession, compounded with the loss of the City's RDA on February 1, 2012, it is important for the City to re-evaluate and potentially modify this Financing Plan to assure the fiscal integrity of the TASP financing. There are several development projects which are at various approval stages and any necessary revisions to the levels of development impact fees, should be established as soon as possible.

To this end, staff met with TASP Financing Plan consultant - Economic & Planning Systems, Inc. and that firm is available to immediately update the Financing Plan and to provide assistance with evaluating the existing development projects in the entitlement phase, to assure all necessary fee adjustments and conditions of development are implemented. A work scope and

fee for these tasks was negotiated, based on time and materials for an amount not to exceed \$145,000. This fee is considered reasonable for the work involved.

The existing Transit Area Impact Fee Fund does not have funding available since sufficient fees have not yet been collected.

Staff therefore recommends that the City Council approve an interfund loan in the amount of \$145,000 from the Sewer Fund to the City to pay for the work contemplated in this agreement. The City will repay this loan, from Transit Area Specific Plan (TASP) impact fees. Funding for this obligation will be included in the updated TASP Financing Plan. This loan is expected to be repaid on December 31, 2014.

Fiscal Impact: A budget appropriation of \$145,000 is required from the Sewer Fund, repayable from the Transit Area Specific Plan impact fees, collected over the next two years.

Recommendations:

1. Adopt a resolution authorizing an interfund loan agreement with the City in the amount of \$145,000.
2. Authorize the City Manager to execute a consulting agreement with EPS, Inc. in the amount of \$145,000.
3. Authorize the City Manager to approve a budget appropriation in the amount of \$145,000 from the Sewer Fund.

XIX. BIDS AND CONTRACTS

- * 11. **Award a Construction Contract to Bay Cities Paving and Grading, Inc. for Annual Street Resurfacing Projects, Milpitas Boulevard between Gibraltar Drive and Beresford Court, Projects No. 4255, No. 4261 and No. 3403, Approve a New Capital Improvement Program (CIP) Project, and Approve a Budget Appropriation for the Street Resurfacing Project 2013, Project No. 4268 (Staff Contact: Steve Chan, 586-3324)**

Background: On March 20, 2012, the City Council approved the project plans and specifications and authorized the advertisement for construction bid proposals for Annual Street Resurfacing Project, Milpitas Boulevard between Gibraltar Drive and Beresford Court. This project provides for the repair of base failures on the street, the installation of a 2-inch rubberized asphalt concrete overlay, miscellaneous concrete work and roadway marking improvements. This project also includes the pavement improvement of the Fire Station No. 1 parking lot. The Engineer's Estimate for the base bid project work was \$2,050,000.

The project was advertised and ten sealed bid proposals were received on April 13, 2012. Bid proposals ranged from \$1,682,968.90 to \$2,027,225.00, and the lowest responsible base bid was submitted by Bay Cities Paving and Grading, Inc. in the amount of \$1,682,968.90.

Staff is seeking approval of a new Capital Improvement Program (CIP) project with the necessary budget appropriation in efforts to advance the award of the Street Resurfacing project, which is included in the Draft 5 year CIP. The Engineering Department advertised this project ahead of the summer construction season in effort to obtain favorable pricing and minimize the potential rising costs due to high oil prices. This was a successful strategy which resulted in more competitive and lower bids.

Staff recommends the advancements of Transient Occupancy Tax (TOT) fund in the amount of \$500,000 and Gas Tax Fund in the amount of \$100,000 to the Street Resurfacing Project 2013, Project No. 4268 are required to award project. The remainder of the funding is available in Projects No. 4255, No. 4261, and No. 3403.

Fiscal Impact: A budget appropriation in the amount of \$500,000 of Transient Occupancy Tax (TOT) Fund and \$100,000 of Gas Tax Fund from the next fiscal year's Street Resurfacing Project 2013, Project No 4268 is required to award this project.

Recommendations:

1. Approve a new CIP Project - Street Resurfacing Project 2013, Project No. 4268.
2. Award a construction contract to Bay Cities Paving and Grading, Inc. for Street Resurfacing Project 2013 on Milpitas Boulevard between Gibraltar Drive and Beresford Court, Projects No. 4255, 4261, 4268, and 3403, in the amount of \$1,682,968.90.
3. Approve a budget appropriation by advancing of Transient Occupancy Tax (TOT) funds in the amount of \$500,000 and Gas Tax Funds in the amount of \$100,000 for the new Street Resurfacing Project 2013, Project No 4268.

- * **12. Authorize the City Manager to Execute Amendment No. 1 to the Recreation Service Agreement with Communication Academy for the Total Not-to-Exceed Amount of \$25,000 (Staff Contact: Chris Schroeder, 586-3161)**

Background: On February 1, 2012 the City of Milpitas entered into an agreement with Communication Academy to provide certified personnel, instruction, and supplies for reading, writing, and public speaking instruction for the City of Milpitas Recreation Services programs for Fiscal Year 2011-12. Due to the unanticipated popularity and high enrollments, approval is requested to increase the contract compensation amount by \$10,000 from \$15,000 to a total compensation not-to-exceed of \$25,000 for the remainder of the contract period. All other provisions of the contract shall remain in full force and effect.

Fiscal Impact: None. Funds for this service are available in the Recreation Services operating budget for contract classes for Fiscal Year 2011-12.

Recommendation: Authorize the City Manager to execute Amendment No. 1 to the Recreation Service Agreement with Communication Academy for the total not-to-exceed amount of \$25,000.

- * **13. Authorize the City Manager to Execute Amendment No. 1 to the Recreation Services Agreement with Noteworthy Music for the Total Not-to-Exceed Amount of \$30,000 (Staff Contact: Chris Schroeder, 586-3161)**

Background: On February 1, 2012 the City of Milpitas entered into an agreement with Noteworthy Music to provide certified personnel, instruction, and supplies for musical instrument instruction and art and drawing classes for the City of Milpitas Recreation Services programs for Fiscal Year 2011-12. Due to the unanticipated popularity and high enrollments, approval is requested to increase the contract compensation amount by \$10,010 from \$19,990 to a total compensation not-to-exceed of \$30,000 for the remainder of the contract period. All other provisions of the contract shall remain in full force and effect.

Fiscal Impact: None. Funds for this service are available in the Recreation Services operating budget for contract classes for Fiscal Year 2011-12.

Recommendation: Authorize the City Manager to execute Amendment No. 1 to the Recreation Service Agreement with Noteworthy Music for the total not-to-exceed amount of \$30,000.

- * **14. Approve Plans and Specifications and Authorize Advertisement for Bid Proposals for Park Renovation Project 2011 "Pathways" at Pinewood and Albert Augustine Jr. Memorial Parks, Project No. 5091 (Staff Contact: Steve Erickson, 586-3301)**

Background: Staff completed plans and specifications for the Park Renovation Project 2011 "Pathways" at Pinewood Park and Albert Augustine Jr. Memorial Park, Project No. 5091. This

is a currently funded project identified in the 2011-2016 Capital Improvement Program. The project eliminates trip hazards on the walking paths and provides repairs to pathways at Albert Augustine Jr. Memorial Park and Pinewood Park. The installation of new American with Disabilities Act-compliant curb ramps connecting the pathways to City sidewalks is also included. The Engineer's Estimate for the project is \$200,000, and the City has received a total of \$77,777.78 in Community Development Block Grant Funding (CDBG) to use toward the construction of this project. Project construction will commence later this summer, and is anticipated to be completed in the fall. A copy of the plan title sheet is included in the Council's agenda packet and a complete set of plans and specifications are available for review in the office of the City Engineer.

Staff is recommending approval of the plans and specifications and is requesting authorization for advertisement for bid proposals pending issuance of an encroachment permit from the San Francisco Public Utilities Commission (SFPUC) for work over the Hetch Hetchy water line.

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

Recommendation: Approve the plans and specifications for Project No. 5091, and authorize advertisement for bid proposals.

* 15. **Approve a Budget Appropriation for the Sidewalk Replacement 2011, Project No. 4254 (Staff Contact: Greg Armendariz, 586-3317)**

Background: The City of Milpitas successfully was awarded a \$38,905 risk management grant from ABAG to be used towards reducing trip and fall hazards on public sidewalk. These monies are required to be invoiced prior to the end of the 2011-12 fiscal year. Given the short time frame to utilize and expense these funds, staff recommends appropriating this money to the annual sidewalk replacement project where the city has an existing on call contract for sidewalk replacement allowing the money to be spent within the required time frame.

Fiscal Impact: None.

Recommendations: Approve a budget appropriation in the amount of \$38,905 from the ABAG Risk Management Grant to the Sidewalk Replacement 2011, Project No. 4254.

* 16. **Approve and Authorize the City Manager to Execute an Agreement with Schaaf & Wheeler, Consulting Civil Engineers, for the Minor Storm Drain Projects 2011-12, Project No. 3706, and Approve a Budget Appropriation (Staff Contact: Steve Erickson, 586-3301)**

Background: The Minor Storm Drains Projects 2011-12, Project No. 3706, is included in the approved Capital Improvement Program. The work involves clearing debris and sediment that restricts water flows in Wrigley-Ford Creek for the purpose of maintaining flood protection. Work also includes spot replanting of native riparian vegetation, installation of associated irrigation systems, and ongoing monitoring and reporting on the health of the plantings as required by the State as mitigation for work within the creeks. Through the City's professional consultant selection process, Schaaf & Wheeler, Consulting Civil Engineers was selected to provide the construction support and ecological monitoring services required for the project. Staff negotiated a scope and fee for these services not to exceed \$41,729, which is considered reasonable for the work.

Fiscal Impact: A budget appropriation in the amount of \$41,729 is required to execute this agreement, and funds are available in the Storm Drain Fund.

Recommendations:

1. Approve and authorize the City Manager to execute an agreement with Schaaf & Wheeler Consulting Civil Engineers, in the amount of \$41,729, Project No. 3706, subject to approval

as to form by the City Attorney.

2. Approve a budget appropriation in the amount not to exceed \$41,729 from the Storm Drain Fund into the Minor Storm Drain Projects 2011-12, Project No. 3706.

- * 17. **Authorize City Manager to Award a Construction Contract for Abel Street Transit Connection, Project No. 4260, Federal Project No. CML-5314 (003) (Staff Contact: Steve Erickson, 586-3301)**

Background: On April 3, 2012, the City Council approved the project plans and specifications and authorized the advertisement for construction bid proposals for Abel Street Transit Connection Project. The project provides for the installation of new streetscape improvements including curb, gutter, sidewalk, decorative paving, decorative street lighting, landscaping and irrigation along a portion of Abel Street south of Great Mall Parkway.

A Federal Transportation Enhancement Grant in the amount of \$788,000 has been awarded for this project. In order to proceed and meet the tight schedule requirements for the Federal grant, staff recommends the City Council authorize the City Manager to award the construction contract to the lowest responsible bidder after bid opening, if the bid is no higher than 10% above the Engineer's estimate or less as determined at the time prior to bid opening.

As was approved for the successful completion of the new Senior Center, Public Library, Parking Garage and recent projects with tight completion schedules, staff requests the use of the same change order policy to allow for the timely completion of this project. This policy authorizes staff to execute change orders in order to address the need to respond swiftly to construction conditions so as to limit potential claims or risk to the City. The construction contingency established for this project is \$150,000, which is 15% of the estimated construction cost. Staff would not exceed this amount, and would not require an additional appropriation.

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

Recommendations:

1. Authorize the City Manager to award a construction contract for Abel Street Transit Connection Project No. 4260, Federal Project No. CML-5314 (003).
2. Authorize staff to execute change orders for Abel Street Transit Connection Project, Project No. 4260, Federal Project No. CML-5314 (003) provided that the change orders do not exceed the established construction contingency amount for the project, and do not require additional appropriation.

XX. ADJOURNMENT

**COUNCIL BUDGET HEARING SPECIAL MEETING
TUESDAY, MAY 8, 2012 AT 6:00 P.M.**

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, MAY 15, 2012 AT 7:00 P.M.**