JOINT MEETING OF THE MILPITAS CITY COUNCIL AND MILPITAS HOUSING AUTHORITY

AGENDA

TUESDAY, FEBRUARY 6, 2018

455 EAST CALAVERAS BOULEVARD, MILPITAS, CA

6:00 P.M. (CLOSED SESSION)

7:00 P.M. (PUBLIC BUSINESS)

SUMMARY OF CONTENTS

I. CALL JOINT MEETING TO ORDER by Mayor and ROLL CALL by City Clerk

II. ADJOURN TO CLOSED SESSION (6:00 PM)

(a) PUBLIC EMPLOYMENT
Pursuant to California Government Code Section 54957
Title of position to be filled: City Manager

(b) CONFERENCE WITH LABOR NEGOTIATOR
Pursuant to California Government Code Section 54957.6
Agency designated representatives: Tina Murphy, Christopher Diaz, Councilmember Nuñez
Unrepresented Employee: City Manager

(c) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
Pursuant to California Government Code Section 54956.9(d)(1)
Tom Williams v. City of Milpitas, et al. - Santa Clara County Superior Court Case No. 17CV309235

(d) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
Pursuant to California Government Code Section 54956.9(d)(1)
First Amendment Coalition v. City of Milpitas – Santa Clara County Superior Court Case No. 17CV310994

(e) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
Pursuant to California Government Code Section 54956.9(d)(1)
Tom Williams v. City of Milpitas, et al. - American Arbitration Case No. 01-17-0003-5823

(f) CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION
Pursuant to California Government Code Section 54956.9(d)4. City as Plaintiff

(g) CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION
Pursuant to California Government Code Section 54956.9(d)2. City as Defendant.
Senior Housing Development Project

III. CLOSED SESSION ANNOUNCEMENT: Report on action taken in Closed Session, if required per 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 Barbadillo)

VI. PRESENTATIONS

- Recognition of 2017 Synopsys Championship and California State Science Fair winners
- Presentation of Black History Month poster winners

VII. PUBLIC FORUM

Those in the audience are invited to address City 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 item not listed on the agenda, no response is required from City staff or the Council and no action can be taken. Council may instruct the City Manager to place the item on a future meeting agenda.

VIII. ANNOUNCEMENTS

IX. ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

X. APPROVAL OF AGENDA

XI. CONSENT CALENDAR

Consent Calendar items are considered to be routine and will be considered for adoption by one motion of the City Council. The City Manager will indicate any matters not eligible for consent. City Councilmembers shall either (a) state the agenda items they want placed on the Consent list, or (b) declare that they do not have any items for consent. From the dais, Council will then vote to approve all items going onto Consent Calendar and move to approve the listed items in one motion.

Any items not placed on Consent Calendar will be discussed in the order in which they appear on the agenda.

1. **Accept Schedule of Meetings/City Council Calendar for February 2018**

2. **Approve City Council Meeting Minutes of January 11 and 16, 2018 (Staff Contact: Mary Lavelle, 408-586-3001)**

XII. UNFINISHED BUSINESS

3. **Per Request of Councilmember Nuñez, Consider Approving More than 4 Hours of Staff Time to Develop a Proposal to Re-establish Teen Programming for the City of Milpitas (Contact: Councilmember Nuñez, 408-586-3023)**

4. **Per Request of Councilmember Barbadillo, Consider Approving More than 4 Hours of Staff Time to Direct Staff to Conduct a Study on Retail and Commercial Spaces in the MidTown and Transit Area Specific Plan areas (Contact: Councilmember Barbadillo, 408-586-3024)**

5. **Consider Appointing One Councilmember to Santa Clara Valley Transportation Authority's Policy Advisory Committee and Possibly One Alternate Member (Contact: Mayor Tran, 408-586-3029)**

6. **Approve and Authorize the City Manager to Execute a Master Encroachment Agreement with MCI Metro Access Transmission Services Corp. doing business as Verizon Access Transmission Services for Installation of Network Facilities Within Public Right-of-Way (Staff Contact: Steve Erickson, 408-586-3301)**

7. **Adopt a Resolution Approving Sole Source Purchase of Open Town Hall Software Service from OpenGov, Inc. Through November 10, 2021 for the Amount of $41,690.96 and Authorizing the City Manager to Execute Amendment No. 1 to the OpenGov, Inc. Software Services Agreement (Staff Contacts: Will Fuentes, 408-586-3111 and Chris Schroeder, 408-586-3161)**

8. **Approve and Authorize the City Manager to Execute an Agreement with Bellinger Foster Steinmetz Landscape Architecture for Creighton Park, Project No. 5109, and Approved a Budget Appropriation of $900,000 into Creighton Park Renovation Project No. 5109 (Staff Contact: Steve Erickson, 408-586-3301)**

9. **Receive Staff Report with Responses to Public Comments from Recycling and Garbage Services Presentation by Milpitas Sanitation Inc. (Staff Contact: Steve Erickson, 408-586-3301)**

10. **MILPITAS HOUSING AUTHORITY**
Consider Adopting a Housing Authority Resolution Authorizing the Executive Officer (City Manager) to Purchase the Property Located at 1101 South Main St. #112 (Staff Contact: Tim Wong, 408-586-3286)

11. **Reconsider, Approve and Authorize the City Manager to Execute the Subdivision Improvement Agreement, Public Street Maintenance Agreement and Fee Reimbursement Agreement for the Senior Assisted Living Residential Development by Milpitas Phase I, LP (Staff Contact: Steve Erickson, 408-586-3301)**

XIII. REPORTS OF OFFICERS

12. **Per Request of Vice Mayor Grilli, Consider Approving More than 4 Hours of Staff Time to Plan an Event on April 4, 2018 to Commemorate 50th Anniversary of the Assassination of Rev. Dr. Martin Luther King, Jr. (Staff Contact: Renee Lorentzen, 408-586-3409)**

13. **Receive Report of Council Subcommittee on Commissions and Consider New Commissioner Recommendations (Contacts: Councilmember Nuñez, 408-586-3023 and Councilmember Phan, 408-586-3032)**

XIV. NEW BUSINESS

14. **Review and Consider Potential City Policies to Address Wage Theft (Staff Contact: Edesa Bitbadal, 408-586-3052)**

15. **Receive Financial Status Report for the Six Months Ended December 31, 2017 (Staff Contact: Will Fuentes, 408-586-3111)**

16. **Receive City of Milpitas Investment Portfolio Status Report for the Quarter Ended December 31, 2017 (Staff Contact: Will Fuentes, 408-586-3111)**

17. **Accept the 2018 Citizen Options for Public Safety Grant and Approve Budget Appropriation of $115,378 (Staff Contact: Henry Kwong, 408-586-2419)**

XV. RESOLUTIONS

18. **Adopt a Resolution Authorizing Write-Off of $931,582.03 Related to the Settlement Agreement and Mutual Release with Milpitas Mills Limited Partnership, doing business as The Great Mall, Successor in Interest to Great Mall of Bay Area Associates, LP, and Conditional Use Permit No. 1177.18, Condition No. 4 - Cost Reimbursement (Staff Contact: Will Fuentes, 408-586-3111)**

19. **Adopt a Resolution to Authorize Submitting an Application for Funding a $100,000 Grant to the Santa Clara Valley Open Space Authority's Measure Q Urban Open Space Grant Program for McCandless Park, Project No. 5102, Authorize**

Appropriation of Funds when received; and Authorize the City Manager to Conduct All Negotiations and Submit and Sign All Documents Which May Be Necessary for Completion of the Project (Staff Contact: Steve Erickson, 408-586-3301)

20. Adopt a Resolution Awarding a Contract to Southwest Pipelines & Trenchless Corp. and Authorize Director of Engineering/City Engineer to Execute Contract Change Orders for the Marylinn Drive Sanitary Sewer Rehabilitation, Projects No. 6115 and No. 6116 (Staff Contact: Steve Erickson, 408-586-3301)

XVI. AGREEMENTS

21. Approve Project Plans and Specifications, and Authorize Advertisement for Bid Proposals for Midtown Street Light Project No. 3430 on Main Street (Staff Contact: Steve Erickson, 408-586-3301)

22. Award the Bid and Authorize the City Manager to Execute Contract with MoonChef, LLC to Provide Preparation and Delivery of Asian Style Senior Meals in the Amount Initially Not to Exceed $75,350 (Staff Contacts: Chris Schroeder, 408-586-3161 and John Macon, 408-586-3226)

23. Approve Cost-Share Agreement with Milpitas Unified School District for Construction of Phase One Mabel Mattos Elementary School Joint Use Areas and McCandless Park Improvements (Staff Contacts: Renee Lorentzen, 408-586-3409 and Steve Erickson, 408-586-3301)

24. Approve Receipt of Grant from the California Department of Resources Recycling and Recovery Beverage Container Program and Approve a Budget Appropriation into the Engineering Department Operating Budget in the Amount of $19,074 (Staff Contact: Leslie Stobbe, 408-586-3352)

XVII. REPORTS OF MAYOR & COUNCILMEMBERS – from assigned Commissions, Committees and Agencies

XVIII. ADJOURN JOINT MEETING

NEXT REGULAR CITY COUNCIL MEETING
TUESDAY, FEBRUARY 20, 2018

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 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: cdiaz@ci.milpitas.ca.gov / 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, 3rd floor 455 E. Calaveras Blvd., Milpitas and on the City website. All City Council agendas and related materials can be viewed online here: www.ci.milpitas.ca.gov/government/council/agenda_minutes.asp (select meeting date)

APPLY TO SERVE ON A CITY COMMISSION

Current vacancies on:
Arts Commission, Library Commission
Bicycle Pedestrian Advisory Commission
Community Advisory Commission
Economic Development Commission
Emergency Preparedness Commission
Parks, Recreation & Cultural Resources Commission
Recycling & Source Reduction Advisory Commission
Sister Cities Commission
Telecommunications Commission
Veterans Commission
Youth Advisory Commission

Commission application forms are available online at www.ci.milpitas.ca.gov or at Milpitas City Hall. Contact the City Clerk's office at 408-586-3003 for more information.

For assistance in the following languages, you may call:

Đối với Việt Nam, gọi 408-586-3122

对中国人来说，请用 *408-586-3263*

Para sa mga Tagalog, tawagan 408-586-3051

Para español, llame 408-586-3232

If you need assistance, per the Americans with Disabilities Act, for any City of Milpitas public meeting, call the City Clerk at 408-586-3001 or send an e-mail 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 City Council Chambers for all meetings.

AGENDA REPORTS

XI. CONSENT CALENDAR

1. Accept Schedule of Meetings/City Council Calendar for February 2018

Recommendation: Receive Council calendar of meetings for the month of February, and note any changes or additions needed.

Attachment: February 2018 calendar

2. Approve City Council Meeting Minutes of January 11, 2018 and January 16, 2018 (Staff Contact: Mary Lavelle, 408-586-3001)

Recommendation: move to approve the minutes of the January 11, 2018 Special Meeting and the January 16, 2018 Joint Meeting of the Milpitas City Council and the Milpitas Housing Authority.

Attachments: Draft meeting minutes
a) January 11, 2018
b) January 16, 2018

XII. UNFINISHED BUSINESS

3. Per Request of Councilmember Nuñez, Consider Approving More than 4 Hours of Staff Time to Develop a Proposal to Re-establish Teen Programming for the City of Milpitas (Contact: Councilmember Nuñez, 408-586-3023)

Recommendation: Consider Councilmember Nuñez's request and if desired, approve more than four hours of time to have staff develop a proposal to re-establish teen programming in Milpitas that will include types of programs, locations and budget.

Attachment: None

4. Per Request of Councilmember Barbadillo, Consider Approving More than 4 Hours of Staff Time to Direct Staff to Conduct a Study on Retail and Commercial Spaces in the MidTown and Transit Area Specific Plan Areas (Contact: Councilmember Barbadillo, 408-586-3024)

Recommendation: Hear request from Councilmember Barbadillo for staff to conduct a study on retail and commercial space in the MidTown and Transit Area Specific Plan areas, and approve staff spending more than four hours of time to complete the study.

Attachment: None

5. Consider Appointing One Councilmember to Santa Clara Valley Transportation Authority's Policy Advisory Committee and Possibly One Alternate Member (Contact: Mayor Tran, 408-586-3029)

Background: On December 21, 2017, Mayor Tran received a letter from Santa Clara VTA requesting that the City of Milpitas either re-affirm current member or appoint a new person to serve on its Policy Advisory Committee (PAC), for a term of two years. Last year, Councilmember Nuñez was appointed to serve as the City Council representative to the Santa Clara Valley Transportation Authority's Policy Advisory Committee, which meets occasionally. Presently, VTA requests that the City appoint (or re-affirm) its representative

and an alternate member to the PAC. Councilmember Nuñez is no longer eligible to serve on the PAC, due to his current service on the VTA Board of Directors.

Recommendation: Consider appointing one Councilmember to serve as the City Council representative to the Santa Clara Valley Transportation Authority's Policy Advisory Committee, and possibly appoint another as alternate.

Attachments:
a) 2018 PAC Appointment Request
b) VTA PAC Appointment Guidelines

6. Approve and Authorize the City Manager to Execute a Master Encroachment Agreement with MCI Metro Access Transmission Services Corp. doing business as Verizon Access Transmission Services for Installation of Network Facilities Within Public Right-of-Way (Staff Contact: Steve Erickson, 408-586-3301)

Background: The City of Milpitas owns, manages, and regulates the use of public streets, easements, and public rights-of-way that have been dedicated to the City. Private companies and public utilities such as Pacific Gas & Electric, telephone company, and Comcast, etc. have the authority under state law and California Public Utilities Commission (CPUC) decisions to install and maintain their facilities within public streets and rights-of-way subject to regulations imposed by the City.

MCI Metro Access Transmission Services Corp. doing business as Verizon Access Transmission Services is planning a fiber-optic upgrade project within the City of Milpitas and is requesting permission to install new fiber-optic lines/conduits within the City public right-of-way. The fiber-optic installation would include new installations and the replacement of existing copper wiring located on existing overhead utility poles and in underground conduits. The work would occur throughout the City, and the system upgrade will provide high-speed telecommunications services to existing Verizon Wireless cell towers and serve large and medium business enterprises. No new cell towers, antennas, or wireless facilities will be installed as part of this upgrade.

Staff recommends approval of a Master Encroachment Agreement to allow for the installation of facilities, and to outline the terms and conditions for the non-exclusive use of the public right-of-way. The Master Agreement provides the City with some control over what and how facilities are installed and maintained within the public right of way, and it requires MCI / Verizon to provide the City with updated maps annually with details of their facilities installed. The Master Agreement also specifies the City may order the removal or relocation of the fiber-optic facilities without cost to the City should the City determine there is a need. The Master Encroachment Agreement has been reviewed by the City Attorney as to form and by the Acting City Engineer as to content.

Fiscal Impact: MCI/Verizon Access will obtain individual City Encroachment Permits for installation of fiber optic lines within City Streets and will pay fees to cover the costs associated with City engineering review and construction inspection associated with the underground installation.

Recommendation: Approve and authorize the City Manager to execute a Master Encroachment Agreement with MCI Metro Access Transmission Services Corp. doing business as Verizon Access Transmission Services for installation of network facilities within public right-of-way.

Attachment: Encroachment Agreement

7. Adopt a Resolution Approving Sole Source Purchase of Open Town Hall Software Service from OpenGov, Inc. Through November 10, 2021 for the Amount of $41,690.96 and Authorizing the City Manager to Execute Amendment No. 1 to the OpenGov, Inc. Software Services Agreement (Staff Contacts: Will Fuentes, 408-586-3111 and Chris Schroeder, 408-586-3161)

Background: On November 11, 2016, the City entered into a five-year Software Agreement with OpenGov, Inc. to utilize its "Intelligence and Transparency" software which allows its customers to create and share internal operational reports, combining financial and non-financial data from numerous sources to help governments make better financial decisions and operate more efficiently. Annual cost for use of the OpenGov Intelligence and Transparency software is $19,290.28 per year and the total amount of the five-year Agreement is $99,151.40. This was approved within City Manager contract authority, which was previously $100,000, and did not go before City Council.

To augment the existing services, staff now recommends the purchase of OpenGov's Open Town Hall software service (previously offered by Peak Democracy, which was acquired by OpenGov in October of 2017) to better interact with residents, provide an online platform to receive input and civic participation from residents, and to offer additional avenues to provide input. This additional service will require amending the original agreement with OpenGov. The Open Town Hall service can be used for community engagement in areas such as the budget, General Plan Update, and utility rate discussions. The online platform helps strengthen participation from residents who have childcare, work schedule or mobility constraints and might otherwise not be able to participate in public hearings or attend City Council meetings.

The Open Town Hall service will not be used for the initial community survey relating to the Fiscal Year 2018-19 Operating Budget and 2018–2023 Capital Improvement Program since timing of implementation will be too late, but it is still a valuable tool and can be used for other budget engagement efforts in the current year as well other areas of interest noted above. By adding on the Open Town Hall service, the City benefits from reduced pricing that will not continue into the future. The useful, but limited tool, SurveyMonkey, will be used for the initial community survey relating to the upcoming Operating Budget and Capital Improvement Program.

Open Town Hall's unique reconciliation process includes handling potentially problematic participation in ways that: (1) do not violate free speech rights; (2) coordinate with the City; and (3) diplomatically seeks a resolution with the author of the problematic participation. Open Town Hall is the only service that provides both registered and unregistered channels of participation. These two channels uniquely address both (1) government concerns about the credibility of the feedback, and (2) citizen concerns about privacy and free speech.

Open Town Hall is the only online public engagement vendor that offers comprehensive monitoring and reconciliation for potentially uncivil, disruptive user participation, which includes users who either: (a) post comments that have obscenities, personal attacks, off-topic content (such as advertising); or (b) who register with the intent to create multiple fraudulent users in order to post multiple times and thereby amplify their feedback to unduly influence the forum. Thus, it is appropriate for a sole source purchase under the City's procurement policies.

Cost for this additional software service for the remainder of the current contract year and for the three further contract years remaining under the Agreement is a total of $41,690.96. With Amendment No. 1, the cumulative total agreement amount, as amended, is $140,842.36.

Fiscal Impact: Funding for the Open Town Hall software is available in the Finance Department's operating budget.

Recommendation: Adopt a resolution approving the sole source purchase of Open Town Hall software service from OpenGov, Inc. through November 10, 2021, for the amount of $41,690.96 and authorizing the City Manager to execute Amendment No. 1 to the OpenGov, Inc. Software Services Agreement, subject to final approval by the City Attorney.

Attachments:
a) Resolution
b) Amendment No. 1 to Agreement with OpenGov Inc.

8. Approve and Authorize the City Manager to Execute an Agreement with Bellinger Foster Steinmetz Landscape Architecture for Creighton Park, Project No. 5109, and Approved a Budget Appropriation of $900,000 into Creighton Park Renovation Project No. 5109 (Staff Contact: Steve Erickson, 408-586-3301)

Background: The project to renovate Creighton Park (Project No. 5109) is in the approved 2017-2022 Capital Improvement Program. Creighton Park is located along Olympic Drive and is approximately five acres with picnic areas, walking path turf area and play equipment. It was originally constructed in 1968 with subsequent renovations completed in 1981 and 1991. The park is in need of renovation to replace aging infrastructure and update access and equipment for compliance with new regulations and law. The project provides for the design and construction of new picnic areas; shade structure(s); play equipment and surface; vehicle and pedestrian pathway; Americans with Disabilities (ADA) accessibility improvements; security lighting; restroom structure and enhancements to landscaping; drainage; and park furniture, as recommended in the City's Parks & Recreation Master Plan.

The construction phase for this project is currently funded at $1 million, as shown in the 2017-2023 Capital Improvement Program. However, it is anticipated that additional funding will be required to construct the desired park improvements based upon the current construction market and recent bid pricing received on other projects. Staff recommends approval of a budget appropriation of $900,000 from the Park Fund into the construction phase of the Creighton Park, Project No. 5109.

Through the City's consultant selection process, Bellinger Foster Steinmetz Landscape Architecture is recommended to provide the design, bidding, and construction support services for completion of this project. Staff negotiated a scope and fee for these services not to exceed $217,788, which is considered reasonable for the work.

Fiscal Impact: Budget appropriation of $900,000 from the Park Fund into the construction phase of the Creighton Park Renovation Project No. 5109.

Recommendations:
1. Approve and authorize the City Manager to execute an agreement with Bellinger Foster Steinmetz Landscape Architecture in the amount of $217,788 for Project No. 5109, subject to approval as to form by the City Attorney and Director of Finance.
2. Approve budget appropriation of $900,000 from the Park Fund into the construction phase of the Creighton Park Renovation Project.

Attachments:
a) Agreement with Bellinger Foster
b) Fee Proposal for Creighton Park & Project Schedule
c) Budget Change Form

9. Receive Staff Report with Responses to Public Comments from Recycling and Garbage Services Presentation by Milpitas Sanitation Inc. (Staff Contact: Steve Erickson, 408-586-3301)

Background: On January 16, 2017, the Council received a presentation from Milpitas Sanitation, Inc., (MSI) regarding the roll-out of the new recycling and solid waste disposal services which started December 1, 2017.

Following the presentation, public comment was taken and 17 people spoke and expressed their experiences with the new services. In all, there were eight that expressed a positive experience with the services; six were negative; and three expressed a neutral experience with the services. Summarizing public comments received, City and MSI staff prepared the following responses to concerns and questions raised:

- Quarterly Residential Billing Cycle: Starting December 1, 2017, Milpitas Sanitation, Inc. started the billing process for waste services, which is a change from the former service. The franchise agreement with MSI specifies a quarterly billing cycle process, and invoices are released in three batches during a three month billing cycle. This process captures a previous service month as wells as one or two future months of disposal services depending on the invoice batching released.

  Staff had researched other cities where the hauler conducts the service invoicing and found the quarterly billing cycle to be standard for residential services. Informational inserts explaining the changes to service invoicing were included with City issued invoices prior to the start of new December 1, 2017 service. A dedicated page explaining the new program billing is also featured on the City and MSI webpages, and two full-page ads appeared in the 8/11/17 and the 10/13/17 editions of *The Milpitas Post*.

- Auto-pay Receipt: Auto-pay customers receive an invoice via mail or email. They also receive a receipt via mail if MSI does not have an email on file.

- On-Premise Collection Services: MSI provides this service at no charge to customers receiving the Senior Rate. It is also available at no cost to handicapped customers. Customers receiving this service do not need to place their carts out at the curb. MSI drivers will exit the truck and retrieve the customer's carts for service.

- Bulky Item Pick-up and On-call Clean-ups: Starting December 1, 2017, the Household Dump Day was replaced by the On-call Clean-ups and Bulky Item Pick-up service. Single-family residents can arrange for the pick-up of one large bulky item or the collection of three cubic yards of garbage using the bulky bag system at no charge. These services can be requested and scheduled up to four times during a rolling 12-month period. More info can be found at www.MilpitasSanitation.com or by calling MSI customer service.

- Size of food scrap bins in split garbage cart: The California Department of Resources Recycling and Recovery conducted a waste characterization study that determined 30-40% of the waste stream is food scraps and food-soiled paper, and waste cart designs are a result of this study.

  For example, the 19-gallon food scraps side of a 64-gallon cart is 29.6% of the cart size, and the 29-gallon food scraps side of a 96-gallon cart is 30.2% of the cart size. The split cart design and capacities are a direct result of extensive engineering and testing by our cart manufacturer. The resulting sizes are the most efficient for both capacity and collection services. The study also found that narrower sizes do not empty properly during the collection process.

- Spilled trash on street from garbage collection: Trash left from collection service activities is unacceptable. Although reports are limited to a few streets, MSI has started to review where this is occurring and will note it in the driver route books. Driver education regarding the clean-up spilled trash is ongoing.

- Street Sweeping: Observation shows that the number of parked vehicles on streets prohibit efficient street sweeping. The problem will be studied by watching collection trucks/routes in person and via the onboard camera system to see if any changes/practices can be put in place to collect on-street litter.

- Extra Garbage Bag Collection: This process will be reviewed with drivers. Residents are reminded that extra bags of garbage must have an extra bag tag. Extra Bag Tags cost $3.75 each and can be purchased from MSI, and at Milpitas City Hall, Sports and Senior Centers.

- Cardboard collection: Outreach will continue to highlight proper sizing to fit cardboard inside the cart. Cardboard for disposal can be cut down to a 2' x 2' size, and stacked next to collection cart for pick-up. A video showing the Recyclables Split Cart collection process was added to the Milpitas Sanitation website.

City and MSI staff meet monthly to review ongoing service issues, and both City and MSI staff maintain daily contact with residents and respond to customer concerns and troubleshoot problems. Staff are dedicated to quality customer services and providing effective responses to problems that customers may experience with the new program.

Fiscal Impact: None. All of the outreach, trainings and service improvements are within the scope of the franchise agreement.

Recommendation: Receive this report from staff.

Attachment: None

10. MILPITAS HOUSING AUTHORITY

Consider Adopting a Housing Authority Resolution Authorizing the Executive Officer (City Manager) to Purchase the Property Located at 1101 South Main St. #112 (Staff Contact: Tim Wong, 408-586-3286)

Background: The Housing Authority received notification from the property owners of 1101 S. Main Street #112 that they intend to sell their moderate-income affordable housing unit. The affordable sales price for the unit is approximately $454,309. They purchased the unit for $362,000 in March 2008.

Each owner-occupied affordable housing unit that is governed by resale restrictions is require to meet certain obligations when the unit is sold. When an affordable unit is sold, the Resale Restriction Agreement provides three outcomes for the sale.

Three potential outcomes - with a discussion regarding each outcome are:

1. Purchase from a moderate income household.
   Generally, staff is able to find a moderate income household to purchase the unit. However, in this case, the homeowners association, Centria Homeowners Association, is involved in litigation with the developer, Western Pacific Housing, for construction defects. Because of the litigation, coupled with the required and recorded Resale Restrictions on the property, staff is not able to identify any banks that will extend a loan on the property because of risks.

Due to the housing crisis of 2008, lenders overall have been more risk adverse to lend and even more so on residences with litigation. When HOA files a lawsuit, there can be additional homeowner assessments. These potential assessments can be added to potential borrower's debt-to-income ratios, thus potentially making them a high risk borrower.

Staff has found lenders that will lend to units with ongoing litigation, but not units with resale restrictions. Coupled with the Housing Authority's resale restrictions on the unit, lenders have considered it too high risk. Therefore, the realtor has not been able to find any eligible buyers for the unit. There have been some all cash buyers interested, but they exceeded the City's moderate income household income levels, which is not consistent with the purpose and intent of the program.

2. The Housing Authority exercises its Purchase Option.
The Housing Authority may exercise its purchase option and purchase the unit at $454,309.00 to preserve the affordability of the unit. However, there are potential risks involved in the preservation of the unit. Below is a summary of the advantages and disadvantages to the option if the Housing Authority were to purchase the unit.

OPTION	ADVANTAGE	DISADVANTAGE
1. Sell the moderate income unit to a low income household.	• Preserves affordability of the unit	• Because of State requirements governing the City housing fund, the Housing Authority would need to sell the unit to a low income household, therefore the Housing Authority could not fully recoup its investment because the unit would need to be sold at a lower price to meet the affordability levels of a low income household. The price difference is approximately $125,000. • Same situation as current situation in which qualified buyers may not be able to find a loan because of HOA litigation.
2. Housing Authority purchases the unit and rents it to a low income household	• Preserves affordability of the unit	• Property management of Housing Authority owned residential properties can be legally complex (i.e. relocation requirements may apply if the tenant is removed)
3. Housing Authority purchases the unit and leaves it vacant for the duration of the litigation. The trial date is set for March 26, 2018.	• Preserves affordability of the unit	• Housing Authority would not generate any revenue from its investment in the unit while paying for HOA dues and utilities. • Uncertainty about the length of the legal proceedings.

If the Housing Authority wishes to exercise it Purchase Option, the Housing Authority will prepare a Notice to Exercise for the Milpitas Housing Authority its exercise its option to purchase the real property located at 1101 S. Main Street #112, Milpitas. The option has been granted by the Authority pursuant to the Resale Restriction and Option to Purchase Agreement between the Owner and the Authority.

3. The Housing Authority releases the Resale restriction, the seller sells the unit at market rate and the Housing Authority and seller split the appreciation per the Resale Restriction formula.

   The Housing Authority has the ability to release the property for the resale restrictions and it enables the seller to sell the unit at market rate and split the appreciation per the Resale Restriction formula. Section 13 of the Resale Restriction Agreement states:

   13. ***Obligation of Owner After Option Abandonment.*** *If the Authority records a notice of abandonment of the Option, then the Property may be sold by Owner to a third party without restriction as to price; however, upon such sale, Owner shall pay to Authority an amount ("Authority's Share") equal to eighty-five percent (85%) of the difference between (a) the actual sales price net of reasonable and customary real estate commissions paid (such commissions not to exceed six percent (6%) of the actual sales price), and (b) the Adjusted Resale Price. The Authority's Share shall be paid to the Authority concurrently with close of escrow on the sale of the Property, or upon receipt by Owner of the sale price for the Property, whichever shall first occur.*

   For example, this unit sells for $685,650 on the open market. After assuming a 5% real estate commission and subtracting the 5% commission, the net sales price is $653,000. Subtracting the Adjusted Resale Price of $453,000, it leaves a difference of $200,000. Therefore the Housing Authority would get $170,000 and the seller would receive $30,000. So, using this example, the seller would gain an additional $30,000 over the below market price of $453,000.

Based on the three options, in order to preserve the affordability of the unit, staff recommends that the Housing Authority consider these options and direct staff accordingly.

Fiscal Impact: Sufficient funds are available in the Housing Authority Fund if the Authority Board chooses to exercise its purchase option on the unit. There is approximately $8 million in the Housing Authority Fund.

Recommendations:

1. Consider adopting a resolution authorizing the Executive Officer of the Housing Authority to exercise the purchase option to purchase the unit located at 1101 S. Main St. #112, Milpitas, CA for $454,309.
2. Approve a budget appropriation of $454,309 from the Housing Authority Fund to purchase the unit.

Attachments:

a) Housing Authority Resolution
b) Budget Change Form

11. Reconsider, Approve and Authorize the City Manager to Execute the Subdivision Improvement Agreement, Public Street Maintenance Agreement and Fee Reimbursement Agreement for the Senior Assisted Living Residential Development by Milpitas Phase I, LP (Staff Contact: Steve Erickson, 408-586-3301)

Background: A parcel map and development permit for the Senior Assisted Living Residential Development by Milpitas Phase I, LP was approved by the Milpitas Planning Commission on September 27, 2017. The first phase of the development will provide a 199 unit senior assisted residential development located at 1504-1620 South Main Street.

City Council approval of the projects Subdivision Improvement Agreement, Reimbursement Agreement, and the Maintenance Agreement are recommended as the next step to allow for the development to proceed. Public improvements to be constructed and dedicated to the City as part of this project include approximately 1,250 liner feet of new 12 inch sanitary sewer main; traffic signal facilities at the intersection of South Main and Cedar Way; and the construction of new public streets (Costa Street and the eastern extension of Cedar Way) including new utilities, curb, gutter, sidewalk, curb ramps, streetlight and street trees. The developer has executed a Subdivision Improvement Agreement and provided improvement securities to guarantee completion of all required public improvements.

The developer has also executed a Public Street Maintenance Agreement for perpetual maintenance of the new public streets. Additionally, the developer has executed a Fee Reimbursement Agreement for the replacement of an existing sanitary sewer main line within South Main Street. The three aforementioned agreements have been approved by the City Attorney as to form and are ready for approval.

Public Improvements plans and building plans have been submitted to the City for review, approval, and permitting.

On December 19, 2017, the City Council did not vote to approve the three agreements (motion failed on vote of 2–3), which prevents this project from moving forward. The developer, Milpitas Phase I, LP, has requested the City Council reconsider and to approve the three agreements allowing the project to start the construction phase.

California Environmental Quality Act: Consideration of these agreements would not be a project under CEQA as there will be no direct, or reasonably foreseeable indirect physical change in the environment.

Fiscal Impact: The fee reimbursement for replacement of the sanitary sewer main would be partially funded by Transit Area Specific Plan (TASP) fees and the Sewer Fund. The actual amount of the reimbursement will be based upon the actual cost for construction of the sanitary sewer main. Estimated reimbursement amount is $1.3 million, and staff will return to Council for approval of a budget appropriation once installation of the sewer main has been completed and the final cost of construction has been determined.

Recommendation: Reconsider, and move to approve and authorize the City Manager to execute the Subdivision Improvement Agreement, the Public Street Maintenance Agreement and the Fee Reimbursement Agreement for the Senior Assisted Living Residential development by Milpitas Phase I, LP.

Attachments:
a) Subdivision Improvement Agreement
b) Public Street Maintenance Agreement
c) Fee Reimbursement Agreement

XIII. REPORTS OF OFFICERS

12. Per Request of Vice Mayor Grilli, Consider Approving More than 4 Hours of Staff Time to Plan an Event on April 4, 2018 to Commemorate 50th Anniversary of the Assassination of Rev. Dr. Martin Luther King, Jr. (Staff Contact: Renee Lorentzen, 408-586-3409)

Recommendation: Consider Vice Mayor Grilli's request and if desired, approve more than four hours of time to develop and hold a City of Milpitas event on April 4, 2018 to commemorate the 50th anniversary of the assassination of Rev. Dr. Martin Luther King, Jr.

Attachment: None

13. Receive Report of Council Subcommittee on Commissions and Consider New Commissioner Recommendations (Contacts: Councilmember Nuñez, 408-586-3023 and Councilmember Phan, 408-586-3032)

Background: The City Council Commission Subcommittee was formed on December 19, 2017, to review and recommend new Commissioners for final appointment consideration and to recommend any changes to the existing roster of City Commissions. On Monday, January 29, 2018, Subcommittee members reviewed the list of 14 existing City Commissions.

The subcommittee currently recommends no changes to two Commissions:

- Bicycle Pedestrian Advisory Commission (BPAC)
- Telecommunications Commission

Application review and subsequent interviews of potential new commissioners for both above listed adv bodies began the week of January 29, 2018.

Recommendation: Receive report of the Commission Subcommittee and consider new commissioner recommendations for final appointment.

Attachment: None

XIV. NEW BUSINESS

14. Review and Consideration of Potential City Policies to Address Wage Theft (Staff Contact: Edesa Bitbadal, 408-586-3052)

Background: Wage theft is the denial of wages or employee benefits that are rightfully owed to an employee. Wage theft can be failure to pay overtime, minimum wage violations, employee misclassification, illegal deductions in pay, working off the clock, or not being paid at all. Milpitas City Council directed staff to study the topic of wage theft in Milpitas and return with a report, and to later determine whether to bring an ordinance to Council.

The state agency responsible for enforcing state labor laws is the Division of Labor Standards Enforcement lead by the Labor Commissioner. The most common recourse for employees who have suffered wage theft is to file a claim with the Labor Commissioner's Office. Unfortunately, even when an employee is awarded a judgment, it can be very difficult to collect. The Santa Clara County Wage Theft Coalition reported only one third of owed wages were ever paid to workers from 2012 to 2013.

San Francisco, Los Angeles and San Jose have passed wage theft policies in addition to minimum wage laws (see list included in the agenda packet). These policies allow cities to take action against those companies which violate state or federal labor laws in addition to local minimum wage enforcement. Municipalities with robust wage theft policies are larger cities that have departments or divisions dedicated to the enforcement of local labor laws.

City of Milpitas staff issued a public records request from the California Labor Commissioner's Office for all cases which have occurred in the City of Milpitas in the past 15 years. Staff attempted to contact all existing businesses in the City of Milpitas that have a judgment on record with the California Labor Commissioner's office to gain a better understanding of issues around wage theft and request feedback on potential City policies. City staff has done extensive research and met with administrators from the Cities of San Francisco and San Jose about their respective wage theft policies. Additionally, staff coordinated with local Santa Clara County cities that are also considering wage theft policies and ordinances.

City of Milpitas staff met with the Santa Clara County Wage Theft Coalition to discuss policy options for the City of Milpitas. Policies discussed with the Santa Clara County Wage Theft Coalition were a) the revocation of businesses licenses as penalty for any business found in violation of federal, state, and/or local wage and hour laws and b) a policy preventing the city from contracting with any business that has an outstanding unpaid wage judgment or final administrative order for procurement of goods and services.

The topic of wage theft, including the recommended ordinance and procurement policy, were presented to the City's Economic Development Commission on January 8, 2018. Commissioners voted 7 to 1 to recommend that the City Council direct staff to draft a wage theft ordinance and procurement policy. Additionally, a presentation and discussion were scheduled with the Milpitas Chamber of Commerce Board of Directors on Thursday, February 1.

Based on comprehensive research, staff recommends development of a wage theft ordinance which would allow the City to revoke the businesses license of any employer who refuses to pay fair wages. Staff also supports a City procurement policy which prevents the City from contracting with businesses that violate wage and hour laws. Wage Theft policies would have a significant impact on those workers who are struggling to collect on owed wages and benefits. Should the City Council direct staff to draft a wage theft ordinance and procurement policy, staff will utilize several mediums, such as social media and limited direct mail to notice businesses of the forthcoming ordinance and policy change.

Fiscal Impact: The primary fiscal impact for either policy is staff time to administer these policies. It is difficult to predict how many violations there will be given that relatively few cities of comparable size have implemented wage theft policies.

Recommendation: Consider directing staff to draft a Wage Theft Ordinance and City Procurement Policy, and bring those back to City Council for approval. For the wage theft ordinance, it will add specific language to the City's Municipal Code to allow for the revocation of an employer's business license based on failure to comply with a final court order or administrative action for a violation of federal, state or local wage and hour laws. For the procurement policy, it will require businesses bidding for City Contracts to fill out a disclosure form indicating if they have ever had a final judgment or administrative order against them for wage theft. Failure to disclose to the City or failure to pay a final administrative order/judgment would be grounds for bid disqualification or contract termination.

Attachment: Table listing policies of CA jurisdictions with wage theft ordinance

15. Receive Financial Status Report for the Six Months Ended December 31, 2017 (Staff Contact: Will Fuentes, 408-586-3111)

Background: This mid-year financial report places a focus on the City's major operating funds, including General, Water and Sewer. As of December 31, 2017, the General Fund received approximately $32.1 million in total revenue. This amount is $9.1 million less than the revenues received for the same period in FY 16-17 primarily due to last year's $7.2 million reimbursement for the purchase of the property sold to the Milpitas Unified School District and about $1.1 million less in RPTTF Distributions due to the sale of 2 properties in the Successor Agency and the $1.1 million represents the City's share of the sale. Other areas of decreases of $1.9 million were in building and fire permits. Last year, developers wanted to pay their building and fire permit fees before the building code changed at December 31, 2016. Other areas of increases of $1 million were in the sales tax revenue and investment income. Staff anticipates that the overall General Fund revenue will be on track with the budget projection.

City departments' expenditures in the first half of the fiscal year were also on track with their budgets. Overall expenditures were at about 44.19% of the operating budget. Typically for the first half of the fiscal year and as noted, expenditures for some departments exceeded 50% for the first six months. However, these spending patterns are typical due to various invoices that need to be paid at the beginning of each fiscal year instead of being able to spread expenditures evenly throughout the year. Examples of such expenditures include software license maintenance fees which were paid from the Information Services Department budget. Other types of expenditures that caused a couple of departments to exceed the 50% are due to overtime in Fire that will be reimbursed from the State and Federal for mutual aid. Also, the City Attorney's department expenditures include charges that are reimbursable and for special services not originally anticipated.

Putting general revenues and expenditure projections together displays a balanced equation at the end of the year. With that said, cost and budgetary control remain key in maintaining a sound fiscal plan for this year and as the City moves forward.

The Water and Sewer funds remains within the expected patterns in terms of revenue.

Fiscal Impact: None.

Recommendation: Receive financial status report for six months ended December 31, 2017.

Attachments:
General Fund Revenue Report December 31, 2017
General Fund Expenditures by Department - December 31, 2017

16. Receive City of Milpitas Investment Portfolio Status Report for the Quarter Ended December 31, 2017 (Staff Contact: Will Fuentes, 408-586-3111)

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 December 31, 2017 is submitted for the Council's review and acceptance.

The Portfolio Summary Report included in the Council's packet provides a summary of the City's investments by type. It lists the par value, market value, book value, percentage of portfolio, term, days to maturity and the equivalent yields for each type of investment. The Portfolio Details Report provides the same information for each individual investment in the City's portfolio as of December 31, 2017.

As of December 31, 2017, the principal cost (book value) and market value of the City's investment portfolio was $238,165,386 and $236,576,769 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 December 31, 2017 was 1.32%. The comparative benchmarks for the same period were 1.24 % for LAIF (Local Agency Investment Fund) and 1.59% for the 12-month average yield of the Three-year Treasury Note. The weighted average maturity of the portfolio was 505 days. This report and accompanying charts reflect the change from the 2-year Treasury benchmark to the 3-year Treasury benchmark that was approved by Council in the last revision to the City's Investment Policy in August 2017. As the City shifts towards a new weighted average maturity goal of 3 years, investment returns should increase as result of longer duration. However, this will take time

to achieve and requires a dedicated and highly focused investment strategy. As Exhibit 1 shows though, the City is progressing towards its new benchmarks with an increasing weighted average maturity and a higher average yield compared to previous quarters.

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.

Market values of the securities were provided by BNY Mellon, the safekeeping bank of the City's securities. All the securities owned by the City are held in the trust department of BNY Mellon under the terms of a custody agreement.

Four 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 December 31, 2017.

Attachments: Reports and Graphs

17. Accept the 2018 Citizen Options for Public Safety Grant and Approve Budget Appropriation of $115,378 (Staff Contact: Henry Kwong, 408-586-2419)

Background: The California State Legislature awarded $115,378.00 to the City of Milpitas through the Citizen Options for Public Safety (COPS) Grant as authorized by Government Code sections 30061-30063. No City matching funds are required. Government Code section 30062 specifies that these funds must be used exclusively for front line law enforcement services. These funds shall be appropriated pursuant to a written request from the Chief of Police. The Milpitas Police Department recommends the following list of front line municipal police services, or equivalent, to be purchased with the 2018 COPS Grant monies for fiscal year 2017-18:

1. Tactical Training and Equipment
2. Digital Imaging and Mapping System
3. Critical Incident Response Equipment

Fiscal Impact: None. The 2018 Citizen Options for Public Safety (COPS) Grant of $115,378.00 will fully cover the cost of the front line services.

Recommendations:
1. Accept the 2018 Citizen Options for Public Safety (COPS) Grant in the amount of $115,378.
2. Approve a budget appropriation in the amount of $115,378 to the Milpitas Police Department's operating budget.

Attachments:
a) Spending Plan Memo
b) Budget Change Form

XV. RESOLUTIONS

18. Adopt a Resolution Authorizing Write-Off of $931,582.03 Relating to Settlement Agreement and Mutual Release with Milpitas Mills Limited Partnership, doing business

as The Great Mall, Successor in Interest to Great Mall of Bay Area Associates, LP, and Conditional Use Permit No. 1177.18, Condition No. 4 - Cost Reimbursement (Staff Contact: Will Fuentes, 408-586-3111)

Background: In 1999, the City of Milpitas approved Conditional Use Permit No. 1167.18 to allow for a 60,000 square foot entertainment zone at the Great Mall. The Conditional Use Permit is subject to numerous conditions, including those that require Milpitas Mills Limited Partnership ("Mall Owner") to enter into a cost reimbursement agreement with the City to offset the costs of creating and staffing a Great Mall City police beat (the "Cost Reimbursement Agreement") and the ability of the City to demand payment for additional City police officers if necessary. More specifically, Condition No. 4 requires the Great Mall to "fully reimburse the City . . . for two full time police officers" and that "[the Great Mall] further agrees to reimburse the City for an additional police officer upon determination of need after evaluating the situation in 2 years" and Condition No. 8 provides that "[a]s warranted by the monitoring data, and as deemed necessary by the City, additional police officers and facilities will be provided to adequately service the area. As mentioned under Condition 1, these additional costs shall be shared 50/50 unless modified by Council."

As such, the City and Mall Owner entered into the Cost Reimbursement Agreement on April 15, 2000. The Cost Reimbursement Agreement obligated the Mall Owner to pay the cost of two full time police officers, including salary, benefits and overhead, and gave discretion to the Chief of Police to determine within two years whether to place another police officer at the Great Mall at full cost to Mall Owner. The City has consistently placed four police officers at the Great Mall, with Mall Owner only paying the cost for two officers. However, the City believed that the Mall Owner was liable for the cost of the additional officers provided to the Mall Owner at the Great Mall under either Conditional Use Permit No. 1167.18 or the Cost Reimbursement Agreement and started to invoice the Great Mall for such in 2012; 12 years after the effective date of the Cost Reimbursement Agreement. The Mall Owner disputes that it is responsible for any additional costs under Conditional Use Permit No. 1167.18 and the Cost Reimbursement Agreement (the "Dispute") since it was not notified of the need for four officers within first 2 years of the Cost Reimbursement Agreement. Nevertheless, the City and Mall Owner now desire to resolve and settle the Dispute via a Settlement Agreement and Mutual Release.

The following is a summary of key Settlement Agreement provisions:

1. Mall Owner will start paying the City for 50% of the cost of third and fourth officer assigned to the Great Mall as of January 1, 2017.
2. The Mall Owner will pay the City $131,555.97; $119,555.97 for personnel costs for the period January 1 through June 30, 2017 and $12,000 for equipment costs prior to January 1, 2017.
3. The Mall Owner will pay the City $53,426 per month as of July 1, 2017 and this will cover 100% of the cost of the first and second officer and associated equipment and 50% of the cost of the third and fourth officer. The cost per month shall increase every July 1, starting July 1, 2018. Annual Increases of 4% will be effective July 1, 2018, 2019, and 2020. Actual current costs as determined by the annual budget process shall be effective July 1, 2021. Billing shall be 6 months in advance on July 1 and January 1. The cost for the time period July 1 to December 31, 2017 is $320,556. The cost for the time period January 1 to June 30, 2018 is $320,556.
4. The Agreement has already been executed and as a result, the Mall Owner shall pay the City $772,667.97 total, which includes items #2 and #3 referenced previously. This shall be due no later than June 30, 2018.

As a result of the Settlement Agreement, the City will write-off $931,582.03, which is the amount of outstanding Police Officer Cost Reimbursement invoices owed by the Great Mall since 2012 for the third and fourth officer and associated equipment. The write-off also includes miscellaneous false alarm invoices that cannot be tied to specific Great Mall tenants.

While the amount in question is significant, it is questionable as to whether this should have been charged by the City under the Cost Reimbursement Agreement. Thus, both the City and Mall Owner wish to move forward and continue their outstanding economic partnership in Milpitas. Payment of a substantial amount by the Mall Owner is a great indication of its commitment to this partnership.

Fiscal Impact: City will write off $931,582.03 in past due invoices owed by the Mall Owner. This write-off will be effective in FY 2016-17 and impacted the General Fund in that fiscal year. As stated previously, the City will receive $772,667.97 due no later than June 30, 2018. The City will also receive increased ongoing revenue which will equal $206,460 in FY 2017-18 or $17,205 per month as result of the Settlement Agreement.

Recommendation: Adopt a resolution authorizing the write-off of $931,582.03 relating to Settlement Agreement and Mutual Release with Milpitas Mills Limited Partnership, doing business as The Great Mall, Successor in Interest to Great Mall of Bay Area Associates, LP, and Conditional Use Permit No. 1177.18, Condition No. 4 - Cost Reimbursement.

Attachment: Resolution + Settlement Agreement

19. Adopt a Resolution Authorizing Submittal of an Application for Funding a $100,000 Grant to the Santa Clara Valley Open Space Authority's Measure Q Urban Open Space Grant Program for McCandless Park, Project No. 5102, Authorize Appropriation of Funds when received; and Authorize the City Manager to Conduct All Negotiations and Submit and Sign All Documents Which May Be Necessary for Completion of the Project (Staff Contact: Steve Erickson, 408-586-3301)

Background: The McCandless Park Project, Project No, 5102 is included in the approved five-year Capital Improvement Program. The project provides for a new 4-acre public park adjacent to a new Milpitas Unified School District elementary school located on McCandless Drive within the Transit Area. The park will include a soccer field, picnic areas, play structures, walking trail, community garden, and restroom facilities, and the preliminary estimated construction cost is $5.6M.

The project meets the criteria for grant funding through the Santa Clara Valley Open Space Authority's Measure Q Urban Open Space Grant Program. The grant program has $400,000 total funding for fiscal year 2017-2018 to be shared among qualifying projects by eligible applicants after extensive review and consideration by the Authority's Board of Directors. The maximum grant request is $100,000 and the Authority's Program requires applicants to provide at least 33% match of the grant request. The grant request is for $100,000, which will require a minimum of $33,000 in matching funds.

The Authority's Program requires an agreement with the Authority to conduct the proposed project according to the Program's terms and conditions. If executed, the agreement will require the City to operate and maintain the park, and to record a conservation easement on the park property to ensure that the property will be preserved as open space and parkland, and be open to the public in perpetuity.

Staff requests approval to submit the application for this grant, and to accept funding if authorized for the McCandless Park Project, Project No. 5102 and for City Manager to submit and sign all necessary documents.

Alternate: Not proceeding with this grant application will result in a loss of potential funds for the construction of McCandless Park.

California Environmental Quality Act: The project is a mitigation measure to reduce impacts from the Milpitas Transit Area Specific Plan and is noted in the Plan's

Environmental Impact Report prepared for the City as the lead agency and in accordance with California Environment Quality Act.

Fiscal Impact: None. There are sufficient funds in the Project budget to cover the matching funds.

Recommendation: Adopt a Resolution to authorize the submittal of an application for funding for a $100,000 grant to the Santa Clara Valley Open Space Authority's Measure Q Urban Open Space Grant Program for McCandless Park Project, Project No. 5102, Authorize appropriation of the funds when received; and authorize the City Manager to conduct all negotiations and submit and sign all documents, which may be necessary.

Attachments:
a) Resolution
b) Budget Change Form

20. Adopt a Resolution Awarding a Contract to Southwest Pipelines & Trenchless Corp. and authorize Director of Engineering/City Engineer to Execute Contract Change Orders for the Marylinn Drive Sanitary Sewer Rehabilitation, Projects No. 6115 and No. 6116 (Staff Contact: Steve Erickson, 408-586-3301)

Background: On December 6, 2016, the City Council approved the plans and specifications and authorized the advertisement for construction bid proposals for the Marylinn Drive Sanitary Sewer Rehabilitation, Projects No. 6115 and No. 6116 (collectively "the Project"). The Project will install a cured-in-place pipe (CIPP) liner within a City sanitary sewer trunk main, will rehabilitate sewer manholes and will install new sewer laterals. The location of the work is Marylinn Drive at Heath Street and the trunk main crosses under State Route 880. The Engineer's Estimate for the Project is $675,000.

The Project was advertised in The Milpitas Post newspaper, and bid opening was on January 16, 2018. Three sealed bid proposals were received. Bid pricing ranged from $840,406.00 to $1,647,328. The lowest responsible bidder submitting a responsive bid in the amount of $840,406.00 is Southwest Pipelines & Trenchless Corp. No bid protests were filed with the City in regards to this project.

The bid package included two add alternate items (Item 1 and 2) for consideration of submitted pricing after bid opening which total $130,500.00. Add alternate item #1 is for the permanent abandonment of existing 27" diameter pipe segment that is no longer required. Add Alternate item 2 is for the rehabilitation and coating of the sewer main junction structure were the pipelines transition in size located under Interstate 880. Staff recommends that both Add Alternate Items 1 and 2 be included with the award of the project.

The lowest bid price exceeds the Engineer's Estimate by $165,406.00, or approximately 24.5%. Staff believes the reasons for receiving the higher than estimated pricing is due to a heightened economic climate in the Santa Clara Valley; contractors that are extremely busy; a limited pool of contractors that are capable of performing the CIPP lining work on the larger diameter pipe; and the risk associated with this project due to the unforeseen conditions of the pipe transitioning into the junction structure under Interstate 880.

The condition of the trunk main pipe is poor due to its age, and staff believes there is urgency in completing this work. It is believed that lower pricing would not be obtained if the project were to be re-bid. Staff recommends a contract be awarded to Southwest Pipelines & Trenchless Corp. as the lowest responsible bidder submitting a responsive bid.

Staff also interviewed owners of recent projects completed by Southwest Pipelines & Trenchless Corp. All owners contacted relayed a favorable review of the contractor and stated they would rehire this contractor again in the future.

Staff recommends that the City Council award a contract to Southwest Pipelines & Trenchless Corp. for the base bid including both add alternate items for a total contract amount of $970,906. There are sufficient funds available within the project budget to award and construct this project.

As previously approved for successful completion of recent projects with tight completion schedules, staff requests the use of the same change order policy (copy of policy is included in the Council agenda packet). This policy allows for the timely completion of the Project, while addressing the need to respond swiftly to construction conditions and approving necessary change orders, in order to limit potential claims or risk to the City. The construction contingency established for this project is $145,635; approxi-mately 15% of the total contract value. The change order authority is not anticipated to exceed this amount and would not require an additional appropriation.

Alternative: Denial of this request would result in not moving forward to construction the needed improvements.

California Environmental Quality Act: This project is categorically exempt under Section 15301 of the California Environmental Quality Act guidelines for maintenance of existing facilities.

Fiscal Impact: None. Adequate funds are available in the Project budget for construction.

Recommendations:
1. Adopt a resolution awarding a contract including two add alternate item to Southwest Pipelines & Trenchless Corp. as the lowest responsible bidder submitting a responsive bid for the project in the amount of $970,906.
2. Authorize Director of Engineering/City Engineer to execute contract change orders for the Marylinn Drive Sanitary Sewer Rehabilitation, Projects No. 6115 and No. 6116 in an aggregate amount not to exceed the construction contingency of $145,635.

Attachments:
a) Resolution
b) Summary of Bids
c) Change Order Policy

XVI. AGREEMENTS

21. Approve Project Plans and Specifications, and Authorize Advertisement for Bid Proposals for Midtown Street Light Project No. 3430 on Main St. (Staff Contact: Steve Erickson, 408-586-3301)

Background: The Midtown Street Light Project, Project No. 3430 is in the 2017-2022 Capital Improvement Program. Plans and specifications for the Midtown Street Light Project, Project No. 3430 and complete and ready for approval and authorization to advertise for bid proposals.

The project provides for the removal and replacement of the existing 30 feet high cobra head steel street lights and signal poles and replaces them with the Midtown standard decorative LED street lighting and traffic signal poles. The first phase of the project is from Carlo Street to just north of Corning Avenue, and will install 38 new decorative poles including replacement of the traffic signal poles at the South Main/Serra Way intersection. The project

will also install a segment of storm drain and catch basis to address nuisance ponding at Sinnott Lane/South Milpitas.

The estimated cost of construction is approximately $1,500,000. A copy of the front cover of the project specifications is included in the Council's agenda packet and a complete set of the contract documents is available for review in the office of the City Engineer.

Alternative: Denial of this action would result in not moving forward with this project.

California Environmental Quality Act: The project is exempt under Section 15301 (Existing Facilities) of the CEQA Guidelines.

Fiscal Impact: Adequate funds are available in the project budget.

Recommendation: Approve project plans and specifications, and authorize advertisement for bid proposals for the Midtown Street Light Project No. 3430, for Main Street, Milpitas.

Attachment: Plan Title Sheet

22. Award the Bid and Authorize the City Manager to Execute a Contract with MoonChef, LLC to Provide Preparation and Delivery of Asian Style Senior Meals in the Amount Initially Not to Exceed $75,350 (Staff Contacts: Chris Schroeder, 408-586-3161 and John Macon, 408-586-3226)

Background: On October 16, 2017, Tastee, Inc. provided 30-day cancellation notice to the City to terminate their contract to provide Asian Style Senior Meals to the Milpitas Senior Center. To maintain the senior Asian lunch services to the Senior Center, the Purchasing Agent negotiated a four-month bridge contract with MoonChef, LLC to provide meal services beginning November 16, 2017 through March 15, 2018.

Due to the previous vendor canceling their contract with the City, on December 1, 2017, staff released Request for Proposals (RFP) No. 2215 “Preparation and Delivery of Asian Senior Merals” RFP No. 2215 was issued due to Tastee, Inc. canceling their contract with the City and thus requiring a rebid for continued services. Fifteen vendors viewed the RFP after staff published a notice in the Milpitas Post and on the City’s website.

Staff also emailed 11 Bay Area catering companies a link to the bid on Public Purchase and mailed eight bid packets via USPS to local Asian restaurants. Despite these extensive outreach efforts, only one qualified proposal was received before the advertised closing date of January 5, 2018. MoonChef, LLC was selected as the most advantageous vendor to complete these services for the City. MoonChef, LLC will provide Preparation and Delivery of Asian Style Senior Meals to the City’s Senior Center in accordance with County of Santa Clara Senior Nutrition Program specifications.

The new contract for Preparation and Delivery of Asian Style Senior Meals includes an initial contract period in an amount up to $75,350.00 commencing March 16, 2018, through June 30, 2019. The proposed contract includes four one-year options for renewal. The City’s contract with MoonChef, LLC is for the remainder of Fiscal Year 2017-18 as well as Fiscal Year 2018-19 with four option years held by the City. There are four annual renewal options in the amount of $75,350.00, resulting in a total not-to-exceed five-year contract amount up to $376,750.00. Additionally, the County SNP will reimburse the City up to $5.273 per meal served, offsetting nearly the entire cost of the program.

Fiscal Impact: A not-to-exceed amount of $75,350.00 for the initial contract period. Funding for the services is available in the Recreation Services Department’s operating budget for FY 2017-18 and FY 2018-19.

Recommendations:

1. Approve the contract and authorize the City Manager to execute a contract with MoonChef, LLC to provide to provide preparation and delivery of Asian style meals for seniors at the Milpitas Senior Center.
2. Authorize the Purchasing Agent to extend the term of the contract annually for each of the four option years with annual price increase, per the terms of the contract, and without further City Council action, except for the appropriation of funds.

Attachment: Contract with MoonChef

23. Approve a Cost-Share Agreement with Milpitas Unified School District for Construction of Phase One Mabel Mattos Elementary School Joint Use Areas and McCandless Park Improvements (Staff Contacts: Renee Lorentzen, 408-586-3409 and Steve Erickson, 408-586-3301)

Background: On July 1, 2016, the City of Milpitas and the Milpitas Unified School District entered into a Joint-Use Agreement specifying areas in both the District's new elementary school and the new City park that would operate as joint-use recreational areas for the benefit of both the District and City programs, as well as the general public. Per this agreement, the District will construct as part of the elementary school a joint-use shared parking area and basketball court area. The cost of construction for these facilities would be shared equally between the City and District, and the City would provide reimbursement to the District for its share of the improvement cost. The agreement requires the City pay for enhanced improvements to the joint-use area which include adult height basketball pole/hoops and an enhanced court surface.

The July 1, 2016 agreement also specifies the City would be responsible for construction of the future park including the installation of a joint-use soccer field. The cost to construct the field would be shared equally, and the District would reimburse the City for its share of the construction cost. The agreement requires the City pay for enhanced improvements to the joint-use area which include field lighting, adult height basketball pole/hoops, and an enhanced court surface. District is also required to reimburse the City for one-half of the cost to extend the recycled water main within McCandless Drive to the location of the joint-use soccer field. The District's elementary school is currently under construction and the City's park is in the design phase and will return to City Council for final design approval in 2018.

Approval of a cost-share agreement between the City and District is desired to memorialize the actual cost of the joint-use area items specified in the July 1, 2016 Joint-Use Agreement, and to specify terms for City reimbursement to the District as well as to address processes for unforeseen conditions during construction. The estimated cost of the City's reimbursement to the District for the cost to construct the joint-use facilities is estimated at $1,917,348.40. Staff has reviewed the construction cost items outlined in the agreement and believes they are reasonable. An amendment to the agreement will be required to establish the reimbursement terms for the District to the City when the cost of the joint use field area are confirmed. The proposed cost-share agreement was approved by the Milpitas Unified School District Board on January 23, 2018.

Fiscal Impact: The cost of the City's reimbursement to the District for the cost to construct the joint-use facilities is estimated at $1,917,348. If approved, the reimbursement to the District would be funded through the approved McCandless Park Project, No. 5102 in the 2017-2022 Capital Improvement Program as these improvements are for use in tandem with the new City Park. There are sufficient funds in the project at this time, however staff will need to increase funding to the project to fund the remaining construction of McCandless Park as part of the annual Capital Improvement Program update during the FY 2018-19 budget cycle.

Recommendation: Authorize the City Manager to execute the Cost-Share Agreement between the City and the Milpitas Unified School District for Phase One Mabel Mattos Elementary School Joint Use Areas and McCandless Park Improvements.

Attachments:
a) Cost Share Agreement
b) Joint Use Agreement

24. Approve Receipt of Grant from the California Department of Resources Recycling and Recovery Beverage Container Program and Approve a Budget Appropriation into the Engineering Department Operating Budget in the Amount of $19,074 (Staff Contact: Leslie Stobbe, 408-586-3352)

Background: The City of Milpitas received $19,074 from the California Department of Resources Recycling and Recovery (CalRecycle) Beverage Container Recycling Program. Staff applied for this grant funding as authorized by Council Resolutions No. 7094 and No. 7351 to support public outreach about recycling of California Redemption Value bottles and cans. The funding will support educational and promotional services and supplies with respect to the City's recycling activities.

Staff recommends the City Council authorize receipt and appropriate the grant funds into the Engineering Department operations budget for Fiscal Year 2017-18.

Fiscal Impact: None. Funding to the Engineering operating budget in the amount of $19,074 to support City waste and recycling programs.

Recommendation: Approve Receipt of the CalRecycle Grant and appropriate funding to the Engineering Department operating budget, in the amount of $19,074 for Fiscal Year 2017-18.

Attachments:
a) Resolution No. 7094
b) Resolution No. 7351
c) Budget Change Form

XVII. REPORTS OF MAYOR & COUNCILMEMBERS – from the assigned Commissions, Committees and Agencies

XVIII. ADJOURN JOINT MEETING

NEXT REGULAR CITY COUNCIL MEETING
TUESDAY, FEBRUARY 20, 2018