

RESOLUTION NO. _

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS MAKING FINDINGS ON ENERGY SAVINGS UNDER CALIFORNIA GOVERNMENT CODE SECTION 4217.10 ET SEQ. AND DETERMINING OTHER MATTERS IN CONNECTION WITH AN ENERGY SERVICES AGREEMENT; FINDING THE ACTION EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; AND APPROVING THE ENERGY SERVICES AGREEMENT AMENDMENT

WHEREAS, it is the policy of the State of California and the intent of the State Legislature to promote all feasible means of energy conservation and all feasible uses of alternative energy supply sources; and

WHEREAS, California Government Code Section 4217.10 *et seq.* authorizes a public agency to utilize any procurement process, such as a cooperative purchasing schedule, to contract for energy services if its governing body determines, at a regularly scheduled public hearing, public notice of which is given at least two weeks in advance, that the anticipated cost to the agency for the energy services project will be less than the anticipated marginal cost to the agency of electrical energy that would have been consumed by the agency in the absence of the energy services contract; and

WHEREAS, the City of Milpitas (“City”) desires to reduce the steadily rising costs of meeting the energy needs at its facilities; and

WHEREAS, the City previously awarded and entered into a two-phase energy services agreement and related contract documents (“Energy Services Agreement”) with Engie Services U.S., Inc. (“Contractor”), pursuant to which Contractor will provide an energy audit and perform other project development tasks during phase 1 (“Phase 1”) and subsequently design, construct, and install specified energy conservation measures, which will reduce the cost of energy to the City during phase 2 (“Phase 2”) (collectively, the “Project”); and

WHEREAS, Contractor has completed Phase 1 and provided the City with analysis showing the benefits of implementing certain energy conservation measures as well as the cost of the same (“Analysis”), which Analysis is attached hereto as **Exhibit A** and made a part hereof by this reference; and

WHEREAS, the Analysis includes data showing that the anticipated cost to the City for electrical energy and conservation services provided by the Project will be less than the anticipated cost to the City of electrical and other energy that would have been consumed by the City in the absence of such measures; and

WHEREAS, the City and Contractor desire to amend the Energy Services Agreement to incorporate the identified and agreed upon energy conservation measures developed during Phase 1 as part of the scope of Phase 2 as well as make corresponding changes to the Energy Services Agreement to carry out the Project (“Amendment”); and

WHEREAS, the Amendment will be in substantially the form presented at this meeting, subject to such changes, insertions or omissions as the City Attorney reasonably deems necessary following the Council’s adoption of this Resolution; and

WHEREAS, in accordance with Government Code section 4217.10 *et seq.*, on September 20, 2020, the City published notice of a public hearing at which the City Council would consider this Resolution;

WHEREAS, the sites where the Project will be located are at multiple facilities and sites throughout the City of Milpitas; and

WHEREAS, the City’s proposed approval of the Amendment is a “Project” for purposes of the California Environmental Quality Act (“CEQA”); and

WHEREAS, the Guidelines for CEQA, California Code of Regulations Title 14, Chapter 13 (“State CEQA Guidelines”), exempt certain projects from further CEQA evaluation; and

WHEREAS, the City has reviewed the proposed Project and has determined that it is exempt from the provisions of CEQA pursuant to the State CEQA Guidelines and that no exceptions to the exemption apply.

NOW, THEREFORE, based upon the above-referenced recitals, the City Council hereby finds, determines and orders as follows:

1. Per California Government Code section 4217.10 *et seq.*, the City Council hereby finds and determines that all of the recitals set forth above are true and correct.

2. The terms of the Amendment in the form presented at this meeting are in the best interests of the City.

3. In accordance with Government Code section 4217.12, and based on data provided by the Analysis, the City Council finds the anticipated cost to the City for electrical energy and conservation services provided by the Project will be less than the anticipated marginal cost to the City of electrical and other energy that would have been consumed by the City in the absence of the Project.

4. The Project is hereby found to be exempt from the requirements of CEQA on multiple grounds, each of which is independently sufficient to exempt the whole of the Project from CEQA, including:

- a. The Project is exempt from CEQA under a Class 1 categorical exemption for Existing Facilities (14 C.C.R. § 15301) because it involves the minor alteration of existing facilities with improvements that would lead to negligible or no expansion of use beyond the use existing at this time. In all, the Project would result in net environmental benefits by reducing traditional electrical energy consumption of the City. Therefore, the Project would be exempt under a Class 1 exemption.
- b. The Project is also exempt from CEQA under a Class 2 categorical exemption for Replacement or Reconstruction (14 C.C.R. § 15302) because it involves the replacement and reconstruction of existing water meters, lighting, and solar facilities where the new structures will be located on the same site as the structures being replaced and will have substantially the same purpose and capacity.
- c. The Project is also exempt from CEQA under a Class 3 categorical exemption for New Construction or Conversion of Small Structures (14 C.C.R., § 15303) because the water meters, control systems, lighting upgrades, and solar installations are small structures and only minor modifications are needed.
- d. The Project is also exempt from CEQA under a Class 11 categorical exemption (14 C.C.R., § 15311) because it involves the construction of minor structures accessory to existing facilities. As explained above, the Project involves installation of energy efficient fixtures and improvements at existing City owned facilities.
- e. The Project is also exempt from CEQA under the Common Sense Exemption (14 C.C.R., § 15061) because the Project involves installation of energy efficient fixtures and improvements at existing City owned facilities that will benefit the environment by creating more energy efficient facilities.
- f. None of the exceptions to the categorical exemptions apply. 14 C.C.R. § 15300.2. Specifically, the Project is not located in a particularly sensitive environment. The improvements will be installed on existing structures in developed areas. The cumulative impact of successive projects of this same type in the same place over time would not be significant because the facilities are limited in size. As explained above, the Project involves installation of energy efficient fixtures and improvements at City owned facilities. These types of improvements are not unusual. Moreover, the building impacted by the Project is not located within an officially designated state scenic highway. Thus, the Project would not have an impact in this regard. Similarly, the proposed improvements are not located on sites designated pursuant to Government Code section 65962.5. Finally, the Project does not involve any improvements, modifications, or other changes to a historical resource. Therefore, none of the circumstances outlined in Title 14, California Code of Regulations, section 15300.2 apply.

5. The City Council hereby approves the Amendment to the Energy Services Agreement, in accordance with Government Code section 4217.12.

6. The City Manager, or his or her designee, is hereby authorized and directed to negotiate any further changes, insertions and omissions to the Energy Services Agreement as are reasonably deemed necessary, and thereafter to execute and deliver the Energy Services Agreement following the City Council's adoption of this Resolution. The City Manager is further authorized and directed to execute and deliver any and all papers, instruments, opinions, certificates, affidavits and other documents and to do or cause to be done any and all other acts and things necessary or proper for carrying out this resolution and said agreements.

7. This Resolution shall take effect immediately upon its passage.

PASSED AND ADOPTED this ____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

Exhibit A

Investment Grade Audit Report

[Attached Behind This Page]