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Title: Staff Report for a City of San Leandro City Council Resolution to Approve a General Fund Loan of \$455,107.36 and Loan Agreement and Promissory Note, Secured by a Deed of Trust on 2539 Grant Avenue, San Leandro between the City and MTLG, LLC

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Staff Report for a City of San Leandro City Council Resolution to Approve a General Fund Loan of \$455,107.36 and Loan Agreement and Promissory Note, Secured by a Deed of Trust on 2539 Grant Avenue, San Leandro between the City and MTLG, LLC

SUMMARY AND RECOMMENDATIONS

Staff recommends that the City Council approve a General Fund Loan Agreement, at 2% simple interest per annum, evidenced by a Promissory Note, and secured by a recorded Deed of Trust on 2539 Grant Avenue, San Leandro between the City and MTLG, LLC, for \$455,107.36.

BACKGROUND and ANALYSIS

MTLG, LLC, the “Borrower,” owns real property located at 2539 Grant Avenue, San Leandro, CA 94579, APN 80G-910-15 (the “Property”). The Property is 204,732 square feet, flag shaped, and is zoned IG. It is improved with a 13,382 square foot building. A broker’s opinion obtained by the City May 2018 provided a value of between \$7,800,000 to \$8,100,000. The City believes there is more than enough value in the property to insure repayment of the loan if there is a default. The Property is currently used by Halus Power Systems, a renewable energy manufacturing company (Halus).

On April 1, 2013, the City approved Halus’ proposed wind energy conversion project and height variance (“Project”) to be located on the Property. On May 8, 2013, interested persons (“Petitioners”) filed a writ of mandate pursuant to the California Environmental Quality Act (“CEQA”) in Alameda County Superior Court, Case No. RG13677840, alleging that the City, in its regulatory capacity, failed to comply with CEQA and CEQA Guidelines in approving the Project (the “Litigation”). On April 14, 2014, the Alameda County Superior Court entered judgment in favor of the Petitioners, and the court issued a writ of mandate to the City. Thereafter, the court awarded Petitioners’ counsel attorneys’

fees. The City and Halus appealed the award of attorneys' fees, but on January 12, 2018, the Court of Appeal upheld the trial court's award of attorneys' fees and awarded Petitioner attorneys' fees for the appeal action.

Halus agreed to pay all costs incurred by the City in defending approval of the Project and related litigation. The City paid \$186,382.25 for appeal fees and \$232,425.65 in trial court fees, and Halus owes the City an additional \$36,299.46 in other outstanding fees (collectively, "Litigation Costs").

The City paid the Litigation Costs, and Borrower has agreed to repay to the City an amount equal to the Litigation Costs, totaling Four Hundred Fifty Five Thousand One Hundred Seven Dollars and Thirty Six Cents (\$455,107.36.) (the "**Loan**") pursuant to the terms and conditions of a loan agreement. The Loan would be evidenced by a promissory note, and secured by a Deed of Trust on 2539 Grant Avenue. The terms of the loan are 2% simple interest per annum, repayment would commence July 1, 2019, and would be for a 10 year term. If the property is sold, assigned, or otherwise transferred as defined by the agreement, then the loan payments would accelerate to pay off the loan. Immediately after execution, the deed of trust will be recorded.

PREPARED BY: Richard D. Pio Roda, City Attorney