



Legislation Text

File #: 18-646, **Version:** 1

RESOLUTION of the City of San Leandro City Council to Approve a General Fund Loan of \$455,107.36 and the Loan Agreement, Promissory Note, and a Deed of Trust on 2539 Grant Avenue, San Leandro to Secure the Loan, between the City and MTLG, LLC

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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 Borrower owes the City an additional \$36,299.46 in other outstanding fees (collectively, “Litigation Costs”); and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, the City Council is familiar with the terms and conditions of the Loan Agreement, the Promissory Note, and the Deed of Trust; and

WHEREAS, the City Manager recommends approval of the Loan, the Loan Agreement, the Promissory Note, and the Deed of Trust.

NOW THEREFORE, the City Council for the City of San Leandro does **RESOLVE** as follows:

That a General Fund Loan to MTLG, LLC in the amount of \$455,107.36 is approved; and

That the Loan Agreement, the Promissory Note, and the Deed of Trust between the City and MTLG, LLC are hereby approved, and execution by the City Manager, subject to approval as to form by the City Attorney, is hereby authorized; and

That the City Manager is authorized to take all actions otherwise necessary to effect the intent of this Resolution.