

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AWARDING A CONTRACT TO ECOPLEXUS, INC. FOR MAIN SEWAGE PUMP STATION VEHICLE CANOPY PROJECT NO. 6079

WHEREAS, the installation of solar panels atop vehicle canopies requires specialized support and roof structures; and

WHEREAS, Public Contract Code Section 3400 authorizes a public agency to specify the brand or manufacturer of a designated thing, material or product (“sole source”), if the awarding public agency makes a finding that is described in the bid notice or request for proposals that a particular thing, material or product is necessary in order to match other products in use on a particular public improvement either completed or in the course of completion, or is an item that is only available from one source; and

WHEREAS, EcoPlexus, Inc. is a leader in the development, design, engineering, and construction of solar power systems and underlying companion structures; and

WHEREAS, EcoPlexus, Inc. has received time-limited federal and state grant and tax incentive funding to install solar panels and stands ready to immediately construct the car canopy support structures and solar panel system at the City’s Main Sewer Pump Station; and

WHEREAS, after a competitive solicitation process, EcoPlexus, Inc. previously won the rights to install solar panels and construct carports and canopies in other locations throughout the City of Milpitas, and would thereby provide cost savings and economies of scale to taxpayers by performing the Main Sewer Pump Station Vehicle Canopy Project, as well; and

WHEREAS, City Council finds that the delay caused by the conduct of formal competitive bidding and advertising for specialized vehicle car canopies at the City’s main sewage pump station that could accommodate EcoPlexus, Inc., solar panels at this time would severely disrupt and endanger the availability of federal and state grant and tax incentive funding and otherwise make the proposed project infeasible; and

WHEREAS, a well recognized exception in Common Law to the competitive bidding requirement for public entities exists where the nature of a contract or project is such that competitive proposals would be unavailing or would not produce an advantage, thereby rendering any advertisement for competitive bidding undesirable, impractical or impossible (*Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal. App. 3d 631, 164 Cal. Rptr. 56); and

WHEREAS, the rationale for the adoption of the above exception is found in the purposes of the provisions requiring competitive bidding in letting public contracts. Those purposes are to guard against favoritism, improvidence, extravagance, fraud and corruption; to prevent waste of public funds; and to obtain the best economic result for the public (*Graydon*, 104 Cal.App.3d. at. 636); and

WHEREAS, City staff has nevertheless still considered informal quotes from other contractors for the vehicle canopy installation work at the Main Sewage Pump Station and finds the price offered by EcoPlexus, Inc. to be the prevailing quote; and

WHEREAS, the amount bid by EcoPlexus, Inc., in the amount of \$487,667 lies within the Engineer’s Estimate for this project.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence

submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

2. Pursuant to Public Contract Code Section 3400, the City Council designates roof canopies and panels designed and procured through M bar C Construction, an EcoPlexus, Inc. supplier, as the sole source thing, material or product authorized for this project and to allow the purchase of said thing, material or product for the project.
3. The Main Sewer Pump Station Vehicle Canopy Project is hereby awarded to EcoPlexus, Inc. for an amount not to exceed \$487,667.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney