RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS MAKING SOLE SOURCE FINDINGS AND AUTHORIZING THE NEGOTIATION OF TWO FIXED PRICE, MULTI-YEAR HOT MIX ASPHALT MATERIAL PURCHASE AGREEMENTS NOT-TO-EXCEED A COMBINED ANNUAL TOTAL OF $80,000

WHEREAS, the Street Maintenance Section of the Milpitas Public Works Department must perform patch and repair work on City roads and related work sites on a regular basis through the application of hot mix asphalt; and

WHEREAS, such work must be done in a timely manner in order to protect the safety and well-being of the travelling public; and

WHEREAS, asphalt must be procured and applied while still in a hot, malleable state, thereby necessitating close proximity between supplier and application point, the absence of asphalt hot boxes and other specialized equipment; and

WHEREAS, only two suppliers of asphaltic materials, Granite Construction Company and Reed & Graham, Inc., exist within a feasible delivery distance of the City's Public Works yard to serve as suppliers of City asphalt needs, with the second supplier, Reed and Graham, Inc., located at such a distance as to qualify only as an emergency or secondary supplier; and

WHEREAS, no other suppliers of asphaltic materials currently exist within sufficient proximity to City facilities and street sites as to even raise the possibility of addressing City needs; and

WHEREAS, Granite Construction Company and Reed & Graham, Inc., cannot singly meet City needs for asphalt materials, therefore requiring the engagement of both entities as suppliers at any given time; and

WHEREAS, Public Contract Code Section 3400(c)(3) specifically authorizes cities to designate particular materials if they are available from only a single or limited number of sources; and

WHEREAS, California law further excuses cities from the conduct of formal competitive bidding and advertising of public works, such as street repair and patch work, 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 formal advertisement for competitive bidding under the Public Contract Code undesirable, impractical or impossible (Graydon v. Pasadena Redevelopment Agency (1980) 104 Cal. App. 3d 631, 164 Cal. Rptr. 56); and

WHEREAS, the City Purchasing Agent conducted a comprehensive review of available asphalt suppliers in the area and solicited supply feasibility and pricing information; and

WHEREAS, the Director of Public Works has also reviewed the available supplier lists and reviewed the technical requirements of the asphalt application equipment and tools available to City public works staff and concluded that competitive bidding of the asphalt supply contracts would be pointless and would still leave the City with the sole options of Granite Construction Company and Reed & Graham, Inc., as the sole suppliers.

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. The sole source designation of Granite Construction Company and Reed & Graham, Inc., as the sole asphalt suppliers for the City is necessary due to the unavailability of hot asphalt from any other supplier or source in sufficient proximity to City facilities.

3. Putting the asphalt supply contracts out to formal bid would create an incongruity and would not produce any advantage to the public, since the winning bids would be limited to the same two suppliers already identified through informal solicitations and the immutable limitations and characteristics of hot asphaltic materials.

4. City staff sought informal quotes from multiple suppliers, thereby securing market pricing information and sparking market competition to the extent possible. Thus, the authorization to execute contracts with the only available suppliers would not constitute any sign of favoritism, improvidence, extravagance, fraud or corruption.

5. City staff is therefore authorized to negotiate and execute separate supply agreements with Granite Construction Company and Reed & Graham, Inc., each for an up to three-year fixed price format, with two one-year options to extend with a not-to-exceed amount of $80,000 per year. Unit price amounts in such contracts may be allowed to be subject to a quarterly price adjustment based on the Liquid Asphaltic Rack Price.

6. In the final year of such contracts, the Director of Public Works is directed to review and assess available asphaltic material suppliers and to report to the City Council whether market conditions have changed such that competitive bid of these contracts is warranted at that point time in the future.

PASSED AND ADOPTED this _____ day of _____, 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN: (0)

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Jose Esteves, Mayor

APPROVED AS TO FORM:

_____
Gary M. Baum, Interim City Attorney