

RESOLUTION NUMBER 5263

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PERRIS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA AUTHORIZING THE EXECUTION AND DELIVERY OF (1) EQUIPMENT LEASE/PURCHASE AGREEMENT WITH BANC OF AMERICA LEASING & CAPITAL, LLC; (2) ESCROW AND ACCOUNT CONTROL AGREEMENT WITH BANC OF AMERICA LEASING & CAPITAL, LLC, AND WILMINGTON TRUST, NATIONAL ASSOCIATION; (3) PAYING AGENT AGREEMENT WITH BANC OF AMERICA LEASING & CAPITAL, LLC, WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS AND WILMINGTON TRUST, NATIONAL ASSOCIATION; (4) IMPLEMENTATION AGREEMENT WITH WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS; AND AUTHORIZING CERTAIN ACTIONS IN CONNECTION THEREWITH

WHEREAS, the City of Perris (the “City”) is a municipal corporation duly organized and existing under and pursuant to the Constitution and laws of the State of California; and

WHEREAS, the City desires to finance certain improvements (the “Improvements”) consisting of the acquisition of certain street lights and the installation of certain energy savings equipment thereto as described in that certain Purchase and Sale Agreement dated September 11, 2017 (the “Purchase Agreement”) by and between the City and Southern California Edison, a California corporation; and

WHEREAS, the City desires to provide for financing in the approximate amount of four million nine hundred eight-seven thousand five hundred thirty-seven and 00/100 dollars (\$4,987,537.00) for the acquisition and installation of the Improvements; and

WHEREAS, Banc of America Leasing & Capital, LLC (“Banc of America”) has proposed a cost-effective lease purchase financing arrangement for the acquisition and installation of the Improvements, as set forth under the Equipment Lease/Purchase Agreement (the “Agreement”) between Banc of America and the City, the form of which has been presented to the City and is on file with the City Clerk; and

WHEREAS, in connection with the execution and delivery of the Agreement, it will be necessary for the City to enter into an Escrow and Account Control Agreement (the “Escrow Agreement”) among the City, Banc of America and Wilmington Trust, National Association, as escrow agent, the form of which has been presented to the City and is on file with the City Clerk; and

WHEREAS, the City has determined that this lease financing arrangement is the most economical means for providing the Improvements to the City; and

WHEREAS, as a condition of the Agreement, the City must properly maintain, repair and replace such streetlights (the “Services”) during the term of the Lease Agreement; and

WHEREAS, the City believes that it can achieve economies of scale for such Services if the City authorizes Western Riverside Council of Governments (“WRCOG”) to administer the Services on behalf of the City and other member agencies of WRCOG; and

WHEREAS, to allow WRCOG to administer the Services, the City must enter into an Implementation Agreement (the “Implementation Agreement”) with WRCOG, the form of which has been presented to the City and is on file with the City Clerk; and

WHEREAS, the City desires to enter into the Paying Agent Agreement (the “Paying Agent Agreement”) with Banc of America and Wilmington Trust, National Association, and WRCOG pursuant to which funds deposited in accordance with the Agreement and Implementation Agreement will be held and disbursed, the form of which has been presented to the City and is on file with the City Clerk.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PERRIS does resolve as follows:

SECTION 1. CEQA. Based upon its review of the entire record before the City Council, the City Council in its role as a CEQA responsible agency hereby finds and determines that the proposed Agreement and Escrow Agreement, as part of the Project authorized in the Implementation Agreement between the City and the Western Riverside Council of Governments, is categorically exempt from environmental review under CEQA pursuant to State CEQA Guidelines §§ 15301, 15302, 15303 and 15061(b)(3).

The Class 1 exemption specifically exempts from further CEQA review the operation, repair, maintenance, and minor repair of existing public or private structures, involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination. The lease financing arrangement will provide Improvements that require the maintenance on existing streetlights and does not involve an expansion of the floor area of the structures. The replacement of the bulbs to high-efficiency bulbs is a minor alteration. It does not change the use of the street lights, and is more beneficial in terms of reduced energy use and improved public safety. The Class 2 exemption specifically exempts from further CEQA review the replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. The Improvements will have the same purpose as the existing streetlights and the new LED bulbs will not exceed the capacity of the existing bulbs. The Class 3 exemption specifically exempts from further CEQA review the construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made to the exterior of the structure. The Improvements include the installation of new LED bulbs in existing small structures and general maintenance in accordance with the Class 3 exemption.

None of the exceptions to the use of the Class 1, 2 or 3 categorical exemptions identified in State CEQA Guidelines section 15300.2 apply. The Improvements include the retrofitting of light poles within the City's jurisdiction, but none are located in a particularly sensitive environment and therefore there would not be impacts on an environmental resource of hazardous or critical concern. The Improvements will not result in a cumulative impact from successive projects of the same type in the same place, over time, as they entail the upgrade of bulbs on all currently owned SCE fixtures within the City's jurisdiction. There are no unusual circumstances surrounding the Improvements that result in a reasonable possibility of a significant effect on the environment, as there are no sensitive resources on the existing pole sites and the Improvements do not involve structural modifications. The replacement of bulbs and maintenance of existing structures will not damage scenic resources, including trees, historic buildings, rock outcroppings, or similar resources. The Improvements will not take place on any hazardous waste sites or cause a substantial adverse change in the significance of a historical resource as the existing poles are not considered historical resources. Thus, the categorical exemptions apply, and no further environmental review is required.

The Improvements to be provided as part of the lease financing arrangement are also exempt from CEQA pursuant to State CEQA Guidelines Section 15061(b)(3), which exempts a Project if "the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." The execution of the Agreement and Escrow Agreement regarding the Improvements project involves replacing existing light bulbs in City's jurisdictions with LED technology bulbs. The Improvements do not involve an expansion of use or the bulbs' capacity. Accordingly, there is no possibility that obtaining financing for the replacement of bulbs will have a significant effect on the environment.

SECTION 2. Authorization and Approval of Agreement, Escrow Agreement, Implementation Agreement and Paying Agent Agreement. The City Council hereby approves and authorizes the City to enter into (a) the Agreement in a principal amount which shall not exceed ten thousand two hundred fifty and 00/100 dollars (\$10,250.00) in the form attached hereto as Exhibit A and incorporated hereby by reference, together with any changes therein or additions thereto which are deemed advisable by the City Manager, (b) the Escrow Agreement in the form attached hereto as Exhibit B and incorporated hereby by reference, together with any changes therein or additions thereto which are deemed advisable by the City Manager (c) the Implementation Agreement in the form attached hereto as Exhibit C and incorporated hereby by reference, together with any changes therein or additions thereto which are deemed advisable by the City Manager and (d) the Paying Agent Agreement in the form attached hereto as Exhibit D and incorporated hereby by reference, together with any changes therein or additions thereto which are deemed advisable by the City Manager. The City Manager is authorized and directed to take all steps and actions which are necessary to accomplish execution of the Agreement, the Escrow Agreement, the Implementation Agreement and Paying Agent Agreement pursuant to the authorization given by and the conditions specified in this resolution. The City Manager, or his designee, is authorized to execute the Agreement, the Escrow Agreement, the Implementation Agreement, the Paying Agent Agreement, and appendices to the Professional Services Agreement and Equipment Purchase Agreement between WRCOG and Siemens Industry, Inc. for and on behalf of the City.

SECTION 3. Attestations. The City Clerk or other appropriate City officer is hereby authorized and directed to attest the signature of the City Manager or of such other person or persons as may have been designated by the City Manager, and to affix and attest the seal of the City, as may be required or appropriate in connection with the execution and delivery of the Agreement, the Escrow Agreement, the Implementation Agreement and the Paying Agent Agreement.

SECTION 4. Other Actions. The City Manager and his designees are each hereby authorized and directed, jointly and severally, to take any and all actions and to execute and deliver any and all agreements, documents and certificates which they may deem necessary or advisable in order to carry out, give effect to and comply with the terms of this Resolution, the Agreement, the Escrow Agreement, the Implementation Agreement and the Paying Agent Agreement. Such actions are hereby ratified, confirmed and approved.

SECTION 5. General Liability. Nothing contained in this Resolution, the Agreement, the Escrow Agreement nor any other instrument shall be construed with respect to the City, as Lessee, as incurring a pecuniary liability or charge upon the general credit of the City, as Lessee, or against its taxing power, nor shall the breach of any agreement contained in this Resolution, the Agreement, the Escrow Agreement or any other instrument or document executed in connection therewith impose any pecuniary liability upon the City, as Lessee, or any charge upon its general credit or against its taxing power, except to the extent that the Rental Payments payable under the Agreement are limited obligations of the City, as Lessee, subject to annual appropriation by its governing body, as provided in the Agreement

SECTION 6. Appointment of Authorized Lessee Representatives. The City Manager and her or his designees (the “Authorized Representatives”) are each hereby designated to act as authorized representatives of the City, as Lessee, for purposes of the Agreement and the Escrow Agreement until such time as the governing body of the City, as Lessee, shall designate any other or different authorized representative for purposes of the Agreement or the Escrow Agreement.

SECTION 7. Severability. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

SECTION 8. Repealer. All bylaws, orders and resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance or part thereof.

SECTION 9. Location and Custodian of Records. The documents and materials associated with the action that constitute the record of proceedings on which these findings are based are located at City of Perris, 101 N. D Street, Perris, CA 92570.

SECTION 10. CEQA Notice of Exemption. The City Council hereby directs staff to prepare and file a Notice of Exemption with the Riverside County Clerk within five (5) working days of the approval of the proposed project.

SECTION 11. Effect. This Resolution shall take effect immediately upon its passage.

ADOPTED, SIGNED and **APPROVED** this 8th day of May, 2018.

Michael M. Vargas, Mayor

ATTEST:

Nancy Salazar, City Clerk

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) §
CITY OF PERRIS)

I, Nancy Salazar, City Clerk of the City of Perris do hereby certify that the foregoing Resolution Number 5263 was duly and regularly adopted by the City Council of the City of Perris at a regular meeting thereof held on the 8th day of May 2018, by the following vote:

AYES: BURKE, CORONA, RABB, ROGERS, VARGAS
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

Nancy Salazar, City Clerk

EXHIBIT A

EQUIPMENT LEASE/PURCHASE AGREEMENT

(ON FILE WITH CITY OF PERRIS CITY CLERK'S OFFICE)

EXHIBIT B

ESCROW AND ACCOUNT CONTROL AGREEMENT

(ON FILE WITH CITY OF PERRIS CITY CLERK'S OFFICE)

EXHIBIT C

IMPLEMENTATION AGREEMENT

(ON FILE WITH CITY OF PERRIS CITY CLERK'S OFFICE)

EXHIBIT D

PAYING AGENT AGREEMENT

(ON FILE WITH CITY OF PERRIS CITY CLERK'S OFFICE)