

**MOUNTAIN VIEW-LOS ALTOS HIGH SCHOOL DISTRICT**

**RESOLUTION NO. 21-16**

**RESOLUTION DECLARING THE FUTILITY OF PUBLIC BIDDING FOR EARTHWORK & PAVING TRADE SERVICES FOR DISTRICT OFFICE PORTABLE RELOCATION AND RATIFYING CHANGE ORDER APPROVAL FOR THAT WORK**

**WHEREAS**, the Board of Trustees (“Board”) of the Mountain View-Los Altos High School District (“District”) formally and publicly opened bids for Bid Package B – Earthwork & Paving Trades (“Bid Package B”) for the District Office Portable Relocation Project (“Project”), located at the Mountain View-Los Altos High School District Office, 1299 Bryant Avenue, Mountain View, California 94040; and

**WHEREAS**, of the three (3) bids submitted for Bid Package B, Galeb Paving was determined to be the lowest responsive responsible bidder, and on or about March 30, 2020, the Board awarded a contract to perform the work for Bid Package B on the Project in the amount of Four Hundred Eighty-One Thousand Dollars (\$481,000.00); and

**WHEREAS**, since commencement of the Project, inconsistencies between the project plans, the specification, and the geotechnical report were identified and quantified; and

**WHEREAS**, the Project adjustments represent additions in scope and cost for services to be performed on the Project pursuant to Bid Package B (“Work”); and

**WHEREAS**, the Project adjustments are integral and inseparable from, and inherent to, the Work on the Project for Bid Package B; and

**WHEREAS**, the Contractor issued documentation supporting final pricing for the integral and additional necessary work to the District Office Portable Relocation Project via Change Order #1B for Galeb Paving (“Galeb Paving CO #1B”) totaling \$36,531.00, which brings the total current cost of all approved and pending change orders to \$52,768.00 (10.97% of the original contract amount); and

**WHEREAS**, District staff have concluded that the Galeb Paving CO #1B cost is reasonable; and

**WHEREAS**, requesting bids for the Additional Work, and having another contractor perform the adjusted Work, would result in waste and delay on the Project, which would ultimately be at the expense of the District; and

**WHEREAS**, bringing in a new Contractor to perform the Additional Work would have created coordination and interference problems at the Project, for example, the

need to perform the work within the same area, and would expose the District to liability for delay and/or disruption damages; and

**WHEREAS**, bringing in a new contractor to perform the Additional Work could have created a potential dispute over the warranty for that work and the surrounding work being performed by the Contractor; and

**WHEREAS**, bringing in a new contractor (or contractors) to perform the Bid Package B Work pursuant to the Project adjustments would potentially expose the District to significant cost increase, since Galeb Paving is already familiar with and mobilized on the Project site and any other bids are likely to result in increased costs to the District; and

**WHEREAS**, it is imperative to perform the Additional Work immediately to prevent delay to the Project, which may expose the District to a significant increase in cost; and

**WHEREAS**, the Board previously approved Galeb Paving CO #1B at its June 8, 2020 Board Meeting and now wishes to ratify this approval pursuant to the futility exception authorized under California law;

**WHEREAS**, California courts allow a narrow exception to the public bidding law in circumstances in which public bidding would be futile, undesirable or impractical and would cause additional delay and additional cost; (See, e.g., Los Angeles Dredging Company v. City of Long Beach (1930) 2 Cal. 348; Graydon v. Pasadena Redevelopment Agency (1980) 104 Cal.App.3d 631, 645.); and

**WHEREAS**, notwithstanding the requirements of Public Contract Code sections 20111(b) or 20118.4(a), California law provides that, “[w]here competitive proposals work an incongruity and are unavailing as affecting the final result or where they do not produce any advantage . . . the statute requiring competitive bidding does not apply.” (Hiller v. City of Los Angeles (1961) 197 Cal.App.2d 685, 694); and

**WHEREAS**, bidding the Additional Work for Bid Package B will not affect the final result to the District except to further increase the cost of the Project; and

**WHEREAS**, bidding the Additional Work will not produce an advantage to the District;

**NOW THEREFORE**, the Governing Board of the Mountain View-Los Altos High School District hereby resolves, determines, and finds the following:

**Section 1.** That the above recitals are true and correct.

**Section 2.** For the reasons stated above, public bidding of the Additional Work for Project Bid Package B would not produce an advantage to the District, and would produce a net burden and distinct disadvantages to the District.

**Section 3.** That based on the foregoing, it would be incongruous, futile, and unavailing to attempt to bid the Additional Work for Project Bid Package B.

**Section 4.** The Board hereby ratifies its prior approval of the Change Order to perform the Additional Work, without further advertising for or inviting of bids.

**Section 5.** The Board hereby authorizes the District's Superintendent, or her designee, to take all steps and perform all actions necessary to execute and implement Galeb Paving CO #1B.

**APPROVED, PASSED AND ADOPTED** this 11th day of January, 2021 by the following vote of the Board of Trustees of the Mountain View-Los Altos High School District:

AYES:

NOES:

ABSENT:

ABSTAIN:

I certify that the foregoing resolution was duly introduced, passed, and adopted as stated.

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Dr. Nellie Meyer  
Superintendent  
Mountain View-Los Altos High School District