

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

**RESOLUTION NO. 21/22-26**

**RESOLUTION DECLARING THE FUTILITY FOR  
LANDSCAPING TRADES SERVICES FOR MOUNTAIN VIEW HIGH SCHOOL & LOS  
ALTOS HIGH SCHOOL ATHLETIC FIELD IMPROVEMENTS PROJECT  
AND APPROVING A CHANGE ORDER FOR THAT WORK**

**WHEREAS**, the Board of Trustees (“Board”) of the Mountain View-Los Altos High School District (“District”) formally received proposals for Bid Package E – Landscaping Trades (“Bid Package E”) for the Mountain View High School and Los Altos High School Athletic Field Improvements Project (“Project”), located at Mountain View High School, 3535 Truman Avenue, Mountain View, California 94040 and Los Altos High School, 201 Almond Avenue, Los Altos, California 94022; and

**WHEREAS**, of the two (2) bids submitted for Bid Package E, McGuire and Hester was determined to be the lowest responsive responsible bidder, and on or about March 8, 2021, the Board awarded a contract to perform the work for Bid Package E on the Project in the amount of Seven Hundred Thirty Thousand Dollars (\$730,000.00); and

**WHEREAS**, since commencement of the Project, added tree bubbler irrigation, and lines, added baseball fine in the warning track area, removed existing and reinstalled new decomposed granite along edge of existing fence line at Los Altos site, added trees, mulch and irrigation at Los Altos 900 wing Bldg. (CO #1E); and

**WHEREAS**, by virtue of its design and function, the Additional Work is integral and inseparable from, and inherent to, the work already in progress on the Project; and

**WHEREAS**, the Contractor issued documentation supporting final pricing for the integral and additional necessary landscaping work to the Mountain View and Los Altos High School Athletic Field Improvements project via PCO #8, 11, 18, 27, 28, 29, and 32 (\$92,995.00), which brings the total current cost of all approved and pending change orders to \$822,995.00 (12.74% of the original contract amount); and

**WHEREAS**, District staff have concluded that the McGuire and Hester CO #1E 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 E – Landscaping Trades Work pursuant to the Project adjustments would potentially expose the District to significant cost increase, since McGuire and Hester 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**, 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 E – Landscaping Trades 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 E – Landscaping Trades 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 E – Landscaping Trades.

**Section 4.** The Board hereby approves the Change Order #1E 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 McGuire and Hester CO #1E.

**APPROVED, PASSED AND ADOPTED** this 15th day of February, 2022 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