

MOUNTAIN VIEW-LOS ALTOS HIGH SCHOOL DISTRICT

RESOLUTION NO. 21/22-25

**RESOLUTION DECLARING THE FUTILITY FOR
LANDSCAPING TRADES SERVICES FOR LOS ALTOS HIGH SCHOOL NEW
CLASSROOMS, ENGINEERING LABS, AND AUXILIARY GYMNASIUM 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 L – Landscaping Trades ("Bid Package L") for the Los Altos High School New Classrooms, Engineering Labs, and Auxiliary Gymnasium Project ("Project"), located at Los Altos High School, 201 Almond Avenue, Los Altos, California 94022; and

WHEREAS, of the one (1) bid submitted for Bid Package L, Scapes, Inc. was determined to be the lowest responsive responsible bidder, and on or about August 5, 2019, the Board awarded a contract to perform the work for Bid Package L on the Project in the amount of Three Hundred Seven Thousand Dollars (\$307,000.00); and

WHEREAS, since commencement of the Project, District has finalized provide tree, irrigation, and concrete, replace backflow, add neighbor tree screening. Additionally, add landscape, Visqueen and planter wall detail. (CO #2L); 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 Los Altos High School New Classrooms, Engineering Labs, and Auxiliary Gymnasium project via PCO #196, 197, 199, 200, 201 & 202 (\$47,128.00), which brings the total current cost of all approved and pending change orders to \$355,975.00 (15.95% of the original contract amount); and

WHEREAS, District staff have concluded that the Scapes, Inc. CO #2L 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 L – Landscaping Trades Work pursuant to the Project adjustments would potentially expose the District to significant cost increase, since Scapes, Inc. 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 L – 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 L – 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 L – Landscaping Trades.

Section 4. The Board hereby approves the Change Order #2L 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 Scapes, Inc. CO #2L.

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.

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