

MOUNTAIN VIEW-LOS ALTOS HIGH SCHOOL DISTRICT

RESOLUTION NO. 23/24-3

**RESOLUTION DECLARING THE FUTILITY OF PUBLIC BIDDING FOR
EARTHWORK & PAVING TRADE SERVICES FOR MOUNTAIN VIEW HIGH
SCHOOL STUDENT SERVICES BUILDING 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 Mountain View High School Student Services Building Project (“Project”), located at Mountain View High School, 3535 Truman Avenue, Mountain View, California 94040; and

WHEREAS, of the two (2) bids submitted for Bid Package B, McKim Corporation was determined to be the lowest responsive responsible bidder, and on or about May 12, 2021, the Board awarded a contract to perform the work for Bid Package B on the Project in the amount of Eight Hundred Ninety Thousand, Eight Hundred Thirty One Dollars (\$890,831.00); and

WHEREAS, since commencement of the Project, there were added costs; The Staff parking lot has been used for a staging area and for construction purposes, and the existing asphalt is in poor condition. Per District request, Contractor shall demo/remove approx. 20,000 square feet of existing asphalt, re-compact the existing base, and use new base rock for some areas and place new asphalt for the restoration of the Staff parking lot; Via Change Order #2B for McKim Corporation; and

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

WHEREAS, the Project adjustments are 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 Earthwork & Paving work to the Project via Potential Change Orders (“PCOs”) #148R (McKim – CO#2B) totaling \$238,100.00 which brings the total current cost of all approved and pending change orders to \$294,089.00 (33.01% of the original contract amount); 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 McKim Corporation 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, “where 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. 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 McKim - CO#2B 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 McKim - CO#2B.

APPROVED, PASSED AND ADOPTED this 14th day of August, 2023 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