

MOUNTAIN VIEW-LOS ALTOS HIGH SCHOOL DISTRICT

RESOLUTION NO. 22/23-47

RESOLUTION DECLARING THE FUTILITY OF PUBLIC BIDDING FOR UNDERGROUND UTILITIES 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 C – Underground Utilities Trades ("Bid Package C") 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 four (4) bids submitted for Bid Package C, MK Pipelines 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 C on the Project in the amount of Four Hundred Twenty Seven Thousand Eight Hundred Dollars (\$427,800.00); and

WHEREAS, since commencement of the Project, there were added costs due to additional potholing to locate final connection points for a new water line and valve via Change Order #4C for MK Pipelines - (CO #4C); and

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

WHEREAS, the Contractor issued documentation supporting final pricing for the integral and additional necessary Underground Utilities work to the Project via Potential Change Order ("PCO") #92 via CO#4C for MK Pipelines, totaling \$22,937.40, which brings the total current cost of all approved and pending change orders to \$53,625.20 (12.54% of the original contract amount); and

WHEREAS, District staff have concluded that the MK Pipelines CO #4C cost is reasonable; and

WHEREAS, the Board previously approved MK Pipelines CO#4C at its 01/23/23 Board Meeting and now wishes to ratify this approval pursuant to the futility exception authorized under California law;

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 C Work pursuant to the Project adjustments would potentially expose the District to significant cost increase, since MK Pipelines 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 C 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 C 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 C.

Section 4. The Board hereby ratifies its prior approval of the CO#4C 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 MK Pipelines CO #4C.

APPROVED, PASSED AND ADOPTED this 8th day of May, 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