

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

### **RESOLUTION NO. 21/22-6**

#### **RESOLUTION DECLARING THE FUTILITY OF PUBLIC BIDDING FOR UNDERGROUND UTILITIES ADDITIONAL WORK FOR MOUNTAIN VIEW HIGH SCHOOL STUDENT SERVICES BUILDING AND APPROVING A CHANGE ORDER FOR THAT WORK**

**WHEREAS**, on or about April 15, 2021, 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 Ave, Mountain View, California 94040; and

**WHEREAS**, of the five bids submitted for Bid Package C, MK Pipelines, Inc. (“Contractor”) 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 and NO/100 Dollars (\$427,800.00) to the Contractor; and

**WHEREAS**, since commencement of the Project, the District has elected to proceed with an additive alternate fire line indicated in the plans; and

**WHEREAS**, the additive fire line involves an addition in scope and cost for underground utilities 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 on the Project for Bid Package C; and

**WHEREAS**, the Contractor issued documentation supporting final pricing for the integral and additional necessary work to the Project via Proposed Change Order (“PCO”) No. 7 totaling \$79,300.00 (18.5%), which brings the total current cost of all approved and pending change orders to \$79,300.00 (18.5%) of the original contract amount; and

**WHEREAS**, District staff have concluded that the MK Pipelines, Inc. Change Order #1C (consisting of PCO-007) cost is reasonable; and

**WHEREAS**, requesting bids for the Additional Work, and having another contractor perform the Additional 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 create 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 Additional Work would likely expose the District to significant cost increase because the Contractor is already familiar with, mobilized, and working on the Project site and any other bids are likely to be more than the price of the Change Order; 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 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 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 adjusted Work for Bid Package C.

**Section 4.** The Board hereby approves 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 MK Pipelines Change Order #1C.

**APPROVED, PASSED AND ADOPTED** this 13th day of September, 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