

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

**RESOLUTION NO. 23/24-13**

**RESOLUTION DECLARING THE FUTILITY OF PUBLIC BIDDING FOR  
EARTHWORK AND PAVING TRADE SERVICES FOR FREESTYLE ACADEMY  
AND RATIFYING A CHANGE ORDER 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 and Paving Trades (“Bid Package B”) for the Freestyle Academy Project (“Project”), located at 1299 Bryant Avenue, Mountain View, California 94040; and

**WHEREAS**, of the six (6) bids submitted for Bid Package B, Robert A. Bothman was determined to be the lowest responsive responsible bidder, and on or about May 10, 2021, the Board awarded a contract to perform the work for Bid Package B on the Project in the amount of Three Hundred Ninety Seven Thousand Dollars (\$397,000.00); and

**WHEREAS**, since commencement of the Project, there were added costs; During the subgrade preparation of the stage wall footings, Bothman called for an inspection of subgrade conditions. The geotechnical engineer tested the subgrade and determined that it was unsuitable and would not pass compaction. Also, during the subgrade preparation of the area between Building A and the District office, Bothman was directed by the geotechnical engineer to remove unsuitable soil, base rock, and sub excavate until hitting firm soil, and to import new base rock in order to pass compaction via Change Order #9B for Robert A. Bothman - (“CO#9B”); 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**, 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 Earthwork and Paving to the Project via Potential Change Orders (“PCOs”) #137 and #139 via CO#9B, totaling \$15,393.00, which brings the total current cost of approved and pending change orders to \$135,082.78 (12.82%) of the original contract amount; and

**WHEREAS**, District staff have concluded that the CO#9B costs are reasonable (Sent to the Board on 11/13/23); 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 Robert A. Bothman 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 CO#9B 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 Robert A. Bothman's CO#9B.

**APPROVED, PASSED AND ADOPTED** this 13th day of November, 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.

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