

**MOUNTAIN VIEW WHISMAN SCHOOL DISTRICT**

**Resolution No. 22-23/02-100622**

**RESOLUTION OF THE BOARD OF EDUCATION OF  
MOUNTAIN VIEW WHISMAN SCHOOL DISTRICT DECLARING THE FUTILITY  
OF PUBLIC BIDDING FOR ADDITIONAL WORK ON THE AMY IMAI  
ELEMENTARY SCHOOL NEW FLEX PORTABLE CLASSROOM PROJECT AND  
APPROVING A CHANGE ORDER FOR THAT WORK**

The Board of Education of the Mountain View Whisman School District (“**Board**”) does hereby resolve as follows:

**WHEREAS**, the District has opted to be subject to the Uniform Public Construction Cost Accounting Act pursuant to Public Contract Code section 22030 et seq. (the “**Act**”); and

**WHEREAS**, section 22032 of the Act requires the District to informally bid construction projects valued at more than \$60,000 but less than \$200,000, and formally bid construction projects valued at more than \$200,000, but allows the District to negotiate with contractors for construction projects valued at less than \$60,000; and

**WHEREAS**, on or about March 10<sup>th</sup>, 2022, the District entered into a contract in the amount of \$231,000.00 with Silicon Valley Paving, Inc, (“**Contractor**”), for Contractor to perform work on the Amy Imai Elementary School New Flex Portable Classroom Project, Contract Number BD230055 (the “**Project**”); and

**WHEREAS**, during the course of construction of the Project, the District discovered additional scopes of work due to design revisions and unforeseen conditions that are necessary for Project completion, which required the work be performed by the Contractor so as not to delay the Project (“**Additional Work**”), at a net cost to the District of \$58,248.76, to wit:

Re-route of irrigation currently located under the new portable.	\$22,858.55
Additionally grading scope to make the field flush with the new paving and provide proper drainage for the area, due to elevation differential.	\$25,478.14
Additional asphalt replacement, repair of irrigation backflow, and install new sod to the newly graded portion of the field.	\$9,912.07
<b>Total</b>	<b>\$58,248.76</b>

**WHEREAS**, Notwithstanding the Act, 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 that public entities need not comply with competitive bidding processes where to do so would be impractical or futile and would not serve

the purposes of competitive bidding. (*Los Angeles Dredging Company v. City of Long Beach* (1930) 2 Cal. 348; *Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631.); and

**WHEREAS**, the Additional Work is for an unforeseen condition and the short project schedule of 40 calendar days will not allow time for packing and bidding the work to another contractor and still allow for the completion prior to students arriving onsite. The Contractor is already onsite performing the same scope of work, grading and landscape replacement, with the required equipment and personnel, and has completed all of the original contract work for the Project. District staff and the Project architect believe that it would be futile to proceed with a new contractor to perform the Additional Work as it would have resulted in waste and delay to the Project, which would be at the expense of the District. Additional factors that warrant a finding of futility include:

1. A new contractor performing the Additional Work would have the burden of acquainting itself with the issues that have arisen on this Project, including but not limited to the existing conditions at the Project and their variance from the District's plans and specifications for the Project. Preparing new plans and specifications for a new contractor would be at the District's expense.
2. If the District were to bid the work necessitated by the omitted scopes of work, the prices of those bids would likely be more than the price of the Additional Work where Contractor's costs to perform that work would remain lower than other contractors who may bid because Contractor was already mobilized on the Project.
3. Bringing in new contractors to perform the Additional Work would create coordination and interference problems with the Contractor, which would be at the District's expense.
4. The value of each of the Additional Work is less than the \$60,000 bidding requirement threshold in section 22034 of the Act.

**WHEREAS**, the Additional Work and the costs thereof are described in the Change Order attached hereto as **Exhibit A**. District staff believe that the costs associated with this Additional Work (\$58,248.76) are reasonable and reflect the market rate for this type of work, such that the District is not paying any more in costs than it would if this Additional Work were competitively bid.

**NOW THEREFORE, IT IS RESOLVED, DETERMINED AND ORDERED** by the **Board of Education of the Mountain View Whisman School District** as follows:

**Section 1.** That the foregoing recitals are true and correct.

**Section 2.** For the reasons stated above, public bidding of the scope for the Additional Work 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 publicly bid the Additional Work on the Project.

**Section 4.** That the Board hereby approves and ratifies the Additional Work on the Project for the costs estimated by District staff and performed by Contractor as reflected in Exhibit "A", without further advertising for or inviting of bids.

**Section 5.** That the District's Superintendent or his designee is authorized to take all steps and perform all actions necessary to execute and implement the Change Order attached as **Exhibit A**, and to take all necessary acts to implement this Resolution.

**PASSED AND ADOPTED** this **October 6, 2022**, by the Board of Education of the Mountain View Whisman School District of the County of Santa Clara, State of California, by the following vote:

AYES: \_\_\_\_\_

NOES: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ABSENT: \_\_\_\_\_

This is to certify that this is a true and correct copy of the resolution as adopted and approved at a regular meeting of the Board of Education of the Mountain View Whisman School District.

Attest:

\_\_\_\_\_  
Board President  
Mountain View Whisman School District

\_\_\_\_\_  
Clerk, Board of Education,  
Mountain View Whisman School District

**Exhibit A**

**Change Order No. 1**