TAMALPAIS UNION HIGH SCHOOL DISTRICT
RESOLUTION NO. 23-1

RESOLUTION DECLARING THE FUTILITY OF BIDDING FOR ADDITIONAL SCOPE WORK AND APPROVING THAT WORK

WHEREAS, the Tamalpais Union High School District ("District") has adopted the Uniform Public Construction Cost Accounting Act ("Act"), Public Contract Code section 22000, et seq., which establishes a uniform cost accounting standard and allows for an alternate method for bidding of public works projects by local public agencies;

WHEREAS, the limits for the bidding of public works projects by local public agencies under the Act provide that (a) public projects of $60,000 or less may be performed by District employees by force account or by negotiated contract (Public Contract Code § 22032(a)); (b) public projects of $200,000 or less may be contracted by informal procedures (Public Contract Code § 22032(b)); and (c) public projects over $200,000 are subject to formal bidding procedures (Public Contract Code § 22032(c));

WHEREAS, Vintage Contractors, Inc. ("Contractor") agreed to perform work resurfacing of six tennis courts at Redwood High School ("Project") including, without limitation, the repair of 800 linear feet of crack repairs, and entered into a contract ("Contract") with the District, dated April 10, 2023, for the Project for One Hundred Forty Thousand and 00/100 Dollars ($140,000.00.) ("Contract Price");

WHEREAS, as work progressed, the District and Contractor discovered that extra-scope work was necessary to repair unanticipated crack repairs of an additional 1200 linear feet ("Extra Scope Work");

WHEREAS, as a result of the Extra Scope Work, Contractor will be required to incur extra costs performing the Project, which resulted in Contractor submitting a change order for the Project in the amount of Nineteen Thousand Seven Hundred and Twenty-One Dollars and 00/100 ($19,721), inclusive of a Contract Price credit of Six Thousand Seven Hundred and Fourteen Dollars and 00/100 ($6,714.00) for descoped work, increasing the Contract Price by more than ten percent (10%) for a total Contract Price of One Hundred Fifty-Nine Thousand Seven Hundred and Twenty-One Dollars and 00/100 ($159,721);

WHEREAS, Public Contract Code section 20118.4 states that the governing board of a school district may, "authorize the contractor to proceed with performance of the change or alteration of contract, without the formality of securing bids, if the cost so agreed upon does not exceed the greater of the following: (a) The amount specified in Section 20111 or 20114, whichever is applicable to the original contract; or (b) Ten percent of the original contract price;"

WHEREAS, notwithstanding Public Contract Code sections 20111 and 20118.4 or the Act, California courts allow a narrow exception to the public bidding law in circumstances in which it would be futile, undesirable or impractical and would cause additional delay and additional cost (*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);

WHEREAS, California law provides that, "where competitive proposals work an incongruity and are unveiling as affecting the final result, or where they do not produce any advantage . . . a statute requiring competitive bidding does not apply" (*Hiller v. City of Los Angeles* (1961) 197 Cal.App.2d 685, 694);

WHEREAS, based on the circumstances, the price of the Extra Scope Work is reasonable;

WHEREAS, if the District were to have to bid the Extra Scope Work and the District did, in fact, receive any bids for such a relatively low-dollar project, the Project would be delayed and the prices of those bids would likely be more than the price of the Extra Scope Work because the Contractor is already mobilized on the Project, and any new contractor would need to mobilize and demobilize, which would increase its pricing;

WHEREAS, bringing in new contractors to perform the Extra Scope Work could create coordination and interference problems with the Contractor;

WHEREAS, bidding the Extra Scope Work will not produce an advantage to the District.

NOW, THEREFORE, the Board of Education of the Tamalpais Union High School District hereby resolves, determines, and finds the following:

1. That the foregoing recitals are true.

2. For the reason stated above, public bidding of Extra Scope Work would not produce an advantage to the District, and would produce a net burden and distinct disadvantage to the District because of the delays that would be incurred to the Project's completion.

3. Based on the foregoing, it would be incongruous, futile, and unavailing to publicly bid the Extra Scope Work.

4. That the Board hereby approves the increase of the Contractor's Contract Price by Nineteen Thousand Seven Hundred and Twenty-One Dollars and 00/100 ($19,721) for an adjusted total Contract Price of One Hundred Fifty-Nine Thousand Seven Hundred and Twenty-One Dollars and 00/100 ($159,721) without further advertising for or inviting of bids.

5. That the District's Superintendent or designee is authorized to take all steps and perform all actions necessary to execute and implement the Extra Scope Work.

PASSED AND ADOPTED by the Board of Education of the Tamalpais Union High School District this 8 day of August, 2023, by the following vote:

AYES: 5 (Harlander, Loebbaka, Roenisch, Saavedra, Uhlhorn)

NOES: 0

ABSTAIN: Ø

ABSENT: Ø

By: _____
Karen Loebbaka, President,
Board of Education of the Tamalpais Union High School District

Attest:

_____
Leslie Harlander, Clerk, Board of Education of the Tamalpais Union High School District