RESOLUTION NO. 20-10

OF THE TAMALPAIS UNION HIGH SCHOOL DISTRICT BOARD OF EDUCATION

RESOLUTION DECLARING THE FUTILITY OF PUBLIC BIDDING FOR ELEVATOR MODERNIZATION SERVICES AT HIGH SCHOOL 1327 AND APPROVAL OF CONTRACT FOR SAME

WHEREAS, the passenger elevator ("Elevator") at High School 1327, located at 1327 Sir Francis Drake Boulevard, San Anselmo, California ("High School") has been condemned and removed from service due to failure of the elevator's controller interface board;

WHEREAS, Tamalpais Union High School District ("District") staff have confirmed the controller interface board's original equipment manufacturer is no longer in business;

WHEREAS, District staff have confirmed the Elevator requires work to modernize the obsolete components and bring the High School's elevator back into service ("Project");

WHEREAS, the District now desires to enter into contract for the Project;

WHEREAS, pursuant to Public Contract Code Sections 22030, *et seq.*, the District's Board of Education ("Board") previously approved the District's adoption of the California Uniform Public Construction Cost Accounting Act ("CUPCCAA");

WHEREAS, pursuant to Public Contract Code Section 22032, subdivision (b), CUPCCAA provides for informal bidding for projects estimated to cost more than Sixty Thousand Dollars ($60,000), but less than Two Hundred Thousand Dollars ($200,000);

WHEREAS, the estimate for the Project is Ninety-One Thousand, Seven Hundred Seventy-Eight and 33/100 Dollars ($91,778.33);

WHEREAS, CUPCCAA requires districts to maintain a list of "qualified" contractors ("CUPCCAA Contractor List"), utilized in connection with informal bidding notices;

WHEREAS, the District's CUPCCAA Contractor List includes a single firm, ThyssenKrupp, which is licensed and qualified to perform elevator-related work;

WHEREAS, District staff desire to contract directly with ThyssenKrupp, as the only firm appearing on the District's CUPCCA Contractor List qualified and licensed to perform the work required for the Project;

WHEREAS, notwithstanding Public Contract Code Sections 22030, *et seq.*, California courts allow a narrow exception to competitive procurement 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 unavailing as affecting the final result or where they do not produce any advantage . . . the statute . . . does not apply." (*Hiller v. City of Los Angeles* (1961) 197 Cal.App.2d 685, 694.);

WHEREAS, additional solicitation for informal bids will cause additional delay and cost to the District, due to the absence of other qualified competitors on the CUPCCAA Contractor List capable of providing the required services in connection with Project;

WHEREAS, based on the foregoing, it would be incongruous, futile, and unavailing to attempt additional solicitations for in an attempt to competitively procure services where only a single firm, ThyssenKrupp, appears on the CUPCCAA Contractor List;

WHEREAS, informally bidding the Project will not affect the final result to the District except to delay the Project and increase the cost due to additional staff time required for informal bidding procedures; and

WHEREAS, informally bidding the Project 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:

Section 1. That the above recitals are true and correct.

Section 2. For the reasons stated above, informal bidding of the Project 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 informally bid the Project.

Section 4. The Board hereby declares informal bidding for the Project to be futile.

Section 5. The Board hereby approves the contract for the Project attached hereto as **Exhibit "A."**

APPROVED, PASSED AND ADOPTED by the Board of Education the Tamalpais Union High School District on this 13th day of October, 2020, by the following vote:

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

NOES: 0

ABSTENTIONS: 0

Karli Harlander
President, Board of Education of the
Tamalpais Union High School District

Attested to:

Cynthia Roenisch
Clerk, Board of Education of the
Tamalpais Union High School District