

## **RESOLUTION NO. 9**

### **REDWOOD CITY SCHOOL DISTRICT**

#### **RESOLUTION DECLARING THE FUTILITY OF PUBLIC BIDDING FOR THE KENNEDY NEW ADMINISTRATION AND FAMILY CENTER BUILDING PROJECT AND APPROVING A CHANGE ORDER FOR THAT WORK**

**WHEREAS**, on or about October 2, 2018, the Redwood City School District ("District") formally and publicly opened a bid for a contract for the New Administration and Family Center Building Project at Kennedy Middle School, the ("Project"); and

**WHEREAS**, of the six bids submitted, Beals Martin and Associates, Inc. ("Contractor") was deemed to be the lowest responsive, responsible bidder, and on or about October 17, 2018, the Board awarded a contract to perform the work for the Project in the amount of Five Million Two Hundred and Sixty Seven Thousand Five Hundred and One and NO/100 Dollars (\$5,267,501.00) to the Contractor; and

**WHEREAS**, since commencement of the Project, unforeseen conditions have been discovered and quantified; and

**WHEREAS**, the unforeseen re-routing of electrical conduit, off haul of dirt spoils to a class 2 disposal facility, additional trenching and underground piping, additional sewer and storm drain, additional backflow preventor installation and re-routing, added storm drain tie in, modified irrigation system, installation of footing for electrical conduit, and additional trenching and backfill for electrical conduit; and

**WHEREAS**, by virtue of its design and function, the unforeseen 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 underground utility work to the project at Kennedy Middle School via Proposed Change Order's ("PCO's") No's 3, 6, 11, 13, 17, 24, 26, 28, 29, and 34 totaling \$402,414, (7.6%) which brings the total current cost of all approved and pending change orders to \$544,500 (10.3%) of the original contract amount; and

**WHEREAS**, requesting bids for the Additional Work, and having another contractor perform the Additional Work, would have resulted 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 would have created a potential dispute over the warranty for that work and the surrounding work being performed by the Contractor; and

**WHEREAS**, if the District were to bid the Additional Work necessitated by the Changed Conditions, the prices of those bids would probably be more than the price of the Change Orders because the Contractor is already mobilized on the Project and is familiar with the Project site; and

**WHEREAS**, the bidding of the Additional Work would result in a delay in the project and would cause the project to not be completed prior to December 2019; 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 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 Redwood City School District hereby resolves, determines, and finds the following:

1. The foregoing recitals are true.
2. For the reasons stated above, public bidding of the Additional Work would not produce an advantage to the District, and would produce a net burden and distinct disadvantages to the District.
3. Based on the foregoing, it would be incongruous, futile, and unavailing to publicly bid the construction of the Additional Work.
4. The Board hereby approves the Change Order to perform the Additional Work, without further advertising for or inviting of bids.
5. The Board hereby authorizes the District's Superintendent, or their designee, to take all steps and perform all actions necessary to execute and implement that Change Order.

**PASSED AND ADOPTED** by the Board of Trustees of the Redwood City School District, City of Redwood City, County of San Mateo, State of California, this 16<sup>th</sup> day of October 2019, by the following vote:

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

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

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

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

\_\_\_\_\_

President of the Board of Trustees of the  
Redwood City School District

Attested to:

\_\_\_\_\_

Clerk of the Board of Trustees of the  
Redwood City School District