

**Resolution of Davis Joint Unified School District  
DECLARING FUTILITY OF PUBLIC BIDDING ADDITIONAL CONSTRUCTION WORK AT THE  
EMERSON/DA VINCI JUNIOR HIGH SCHOOL SCIENCE CLASSROOM PROJECT AND  
APPROVING A CHANGE ORDER FOR THAT WORK  
RESOLUTION NO. 54-21**

**WHEREAS**, on October 22, 2020, the Davis Joint Unified School District ("District") formally and publicly opened bids for a contract to construct science classrooms at Emerson/Da Vinci Junior High School ("Project"); and

**WHEREAS**, Abide Builders, Inc. ("Contractor") was the lowest responsive, responsible bidder for the Project, and, in response to the bid, on November 5, 2020, the District's Board of Trustees ("Board") awarded a contract for the Project to Contractor for One Million Seventy Four Hundred Dollars (\$1,074,000) ("Contract Price"); and

**WHEREAS**, during the course of ongoing construction, the Contractor has encountered unanticipated additional work as a result of unforeseen conditions and/or City requested changes involving, without limitation, the water supply lines, storm drain system including manholes and drain lines, fire sprinkler water line, and gas meter ("Additional Work"); and

**WHEREAS**, prior approved Change Orders authorized to date on the Project total \$107,176.00; and

**WHEREAS**, the District and Contractor have held negotiations regarding the Additional Work, and Contractor has issued to the District Proposed Change Order #2 which will cause the Change Orders on the Project to be in excess of 10% of the original Contract Price; and

**WHEREAS**, Contractor has submitted documentation to the District supporting its costs for performing the Additional Work for Proposed Change Order #2; and

**WHEREAS**, Contractor's price to perform the Additional Work for Proposed Change Order #2 is reasonable; and

**WHEREAS**, the Project is nearing completion and there is substantial time pressure on the District to complete the Project in the interest of student and staff safety and in order for the Project to be ready for occupancy at the start of the 2021-22 school year; and

**WHEREAS**, creating and bidding a design for the Additional Work covered by Contractor's Proposed Change Order #2 would have created or will create significant disruption to Contractor, coordination and interference problems with Contractor, delayed Contractor's performance of the work; and

**WHEREAS**, if the District were to bid the Additional Work, other resulting bids would and will likely be higher than the price of Contractor's Proposed Change Order # 2, because Contractor is already mobilized on the Project; and

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**WHEREAS**, having a new contractor perform the Additional Work would result and will result in waste and significant delay, which would be at the expense of the District, while the new contractor mobilizes on the Project; and

**WHEREAS**, having a new contractor perform the Additional Work could create a potential dispute over the warranty for the surrounding work being performed by Contractor; and

**WHEREAS**, Public Contract Code section 20111, subdivision (b), states that a school district is required to competitively bid any public works project with a contract value of \$15,000 or more; and

**WHEREAS**, Public Contract Code section 20118.4, subdivision (a), states that the governing board of a school district “may authorize the contractor to proceed with performance of the change or alteration [to a contract], without the formality of securing bids, if the cost so agreed upon does not exceed the greater of the following: (1) The amount specified in Section 20111 or 20114 . . . [or] (2) Ten percent of the original contract price”; and

**WHEREAS**, notwithstanding Public Contract Code sections 20111 and 20118.4, California law provides a narrow exception to competitive bidding law where such bidding would be futile, undesirable, or impractical and would cause additional delay and cost (*Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631; *Los Angeles Dredging Company v. City of Long Beach* (1930) 2 Cal. 348), so that “[w]here competitive proposals work an incongruity and are unavailing 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); and

**WHEREAS**, bidding the Additional Work would have further delayed and will delay completion and increase the cost of the Project; and

**WHEREAS**, bidding the Additional Work would not have produced an advantage to the District; and

**WHEREAS**, based on the foregoing, it would have been and will be incongruous, futile, and unavailing to solicit bids for the Additional Work; and

**WHEREAS**, the District therefore desires to execute Change Order #2 for Contractor to perform the Additional Work; and

**NOW, THEREFORE**, the Board of Education of the Davis Joint Unified School District hereby finds,

1. That the foregoing recitals are true.
2. For the reasons stated above, although bidding would be typically required for the Additional Work because Change Order #2 exceeds ten percent (10%) of the original contract amount, in the present case, public bidding of the Additional Work would not have produced and will not produce an advantage to the District and would have produced and will produce a net burden and distinct disadvantages to the District.
3. Based on the foregoing, it would be and will be incongruous, undesirable, impractical, futile, and unavailing to publicly bid the Additional Work.
4. That the Board hereby approves Change Order # 2 for Contractor to perform the Additional Work at the Project, without further advertising for or inviting of bids.
5. That the District’s Superintendent or his designee is authorized to take all steps and perform all actions necessary to finalize, execute and implement the Change Order #2 and to carry out, give effect to, and comply with the terms and intent of this Resolution .

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Adopted this 20<sup>th</sup> day of the month of May in 2021.

AYES:

NOES:

ABSENT:

ABSTENTIONS:

By: \_\_\_\_\_

Joe DiNunzio,  
President, Governing Board of the  
Davis Joint Unified School District

ATTEST: \_\_\_\_\_

John Bowes, Ed. D.  
Secretary, Governing Board of the  
Davis Joint Unified School District