

**RESOLUTION OF THE GOVERNING BOARD  
OF THE VISTA DEL MAR UNION SCHOOL  
DISTRICT DECLARING FUTILITY OF  
PUBLIC BIDDING ADDITIONAL  
CONSTRUCTION WORK FOR THE VISTA  
DE LAS CRUCES SCHOOL SEEPAGE PITS  
SYSTEM INSTALLATION PROJECT AND  
APPROVING CHANGE ORDER NO 1 FOR  
THE WORK IN ACCORDANCE WITH  
PUBLIC CONTRACT CODE SECTION 20118.4**

**RESOLUTION NO. 2022-11**

**WHEREAS**, the Vista Del Mar Union School District (hereinafter, “District”) formally, publicly and competitively bid the construction of 10 seepage pits to create a system for the disposal of wastewater on the District site and to replace an aging and inoperable wastewater treatment plant (hereinafter, “Project”);

**WHEREAS**, County Sanitation Company (hereinafter, “Contractor”) was the lowest responsible, and responsive bid for the Project at Two Hundred Nineteen Thousand Dollars and No Cents (\$219,000.00);

**WHEREAS**, the Governing Board of the District awarded the Contract to Contractor on August 12, 2021, for the amount of Two Hundred Nineteen Thousand Dollars and No Cents (hereinafter, “Contract Price”);

**WHEREAS**, the Governing Board of the District on September 9, 2021, entered into a contract with County Sanitation Company for the installation of the Project;

**WHEREAS**, during the course of testing the seepage pits, it was determined that the rate of absorption was higher than projected and higher than permitted by the Santa Barbara County Department of Environmental Services and the State Water Board. As a result, the State and County directed that the Seepage Pit System be redesigned to include additional filtration and treatment prior to discharge into the seepage pits;

**WHEREAS**, Ashley and Vance, the District’s Engineer of Record on the project has redesigned the system to include an Orenco Ax-Max 125-21 treatment system;

**WHEREAS**, the changes to the Seepage Pits to include additional treatment was an unforeseen circumstance necessitating a change to the construction contract in excess of 10% of the original Contract Price;

**WHEREAS**, there are no prior approved change orders for this Contract;

**WHEREAS**, the District and Contractor have held negotiations regarding the Additional Work, and Contractor has issued to the District Proposed Change Order #1 which will cause the Change Orders on the Project to be in excess of 10% of the original Contract Price;

**WHEREAS**, Contractor has submitted documentation to the District supporting its costs for performing the Additional Work for Proposed Change Order #1 and the additional work is reasonable;

**WHEREAS**, 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 handle the School's wastewater;

**WHEREAS**, there is an ongoing risk that further failure of the wastewater treatment plant would expose the health and safety of the students and staff on campus;

**WHEREAS**, creating and bidding a design for the Additional Work covered by Contractor's Proposed Change Order #1 would have created or will create significant disruption to Contractor, coordination and interference problems with Contractor, delayed Contractor's performance of the work;

**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 # 1, because Contractor is already mobilized on the Project;

**WHEREAS**, the redesigned treatment system is integrated in the original design of the seepage pits and having a new contractor perform the Additional Work would result and will result in confusion, overlapping scopes of work, waste and significant delay, which would be at the expense of the District;

**WHEREAS**, the majority of the total change order cost (\$147,639.60) is for the purchase of the new Ax-Max filter system that will be installed by Contractor;

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

**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;

**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";

**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);

**WHEREAS**, bidding the Additional Work would have further delayed and will delay completion and increase the cost of the Project and would not have produced an advantage to the District;

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

**WHEREAS**, the District therefore desires to execute Change Order #1 for Contractor to perform the Additional Work;

**NOW THEREFORE, BE IT HEREBY RESOLVED** that the Governing Board of the Vista Del Mar Union School District finds and declares:

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 #1 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 # 1 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 her designee is authorized to take all steps and perform all actions necessary to finalize, execute and implement the Change Order #1 and to carry out, give effect to, and comply with the terms and intent of this Resolution.

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**APPROVED AND ADOPTED** by the Governing Board of the Vista Del Mar Union School District at a regularly scheduled board meeting held on the 24<sup>th</sup> day of January 2022, in Santa Barbara County, by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

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Nicole Jones, President  
Governing Board of the  
Vista Del Mar Union School District

I, **Dr. Lois Peterson**, Superintendent/Principal and Secretary to the Governing Board of the Vista Del Mar Union School District of Santa Barbara County, California, do hereby certify that the foregoing is a true, and correct copy of a resolution and reflection of its vote as duly adopted by said Board at a meeting thereof, which Resolution is on file and of record in the office of the Superintendent/Principal.

Date: \_\_\_\_\_

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Lois Peterson, Ed.D.  
Superintendent/Principal  
And Secretary to the Governing Board  
Vista Del Mar Union School District