

**DESERT SANDS UNIFIED SCHOOL DISTRICT**

**RESOLUTION NO. 28/2021-2022**

**DECLARING THE FUTILITY OF PUBLIC BIDDING FOR CHANGES IN THE PLUMBING WORK AND  
APPROVING CHANGE ORDER NO. 3 FOR THE 224/01F LINCOLN ELEMENTARY SCHOOL  
MODERNIZATION 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 formal bidding for projects estimated to cost Two Hundred Thousand Dollars (\$200,000) or more;

**WHEREAS**, Public Contract Code section 20118.4 states that 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: (a) The amount specified in Section 20111 ...; or (b) Ten percent of the original contract price;"

**WHEREAS**, Public Contract Code section 20111 states that a school district is required to competitively bid any public works project with a contract value over \$15,000;

**WHEREAS**, on January 12, 2021, the Desert Sands Unified School District ("District"), after formal public bidding, entered into a contract with Empyrean Plumbing, Inc., ("Contractor"), for furnishing all labor, materials, equipment, and services necessary for the Plumbing Work, in the 224/01F Lincoln Elementary School Modernization Project located at 74-100 Rutledge Way, Palm Desert, California 92260;

**WHEREAS**, the original contract amount is \$1,931,316 ("Contract Price");

**WHEREAS**, after award of the contract, it was discovered that an additional restroom building to serve the students and program at the school site were needed ("Differing Conditions"), resulting in modifying the plumbing scope of including an additional restroom building and additional plumbing work to the MPR restrooms ("Additional Work");

**WHEREAS**, the plumbing contractor provided labor and materials collectively with the contract modifications described in the prior recital for the "Additional Work";

**WHEREAS**, the District previously approved a change order for the Contractor in the amount of \$77,416;

**WHEREAS**, the District and the Contractor have negotiated a new proposed change order for the Additional Work in the amount of \$243,826 ("Change Order No. 3"), which, if approved, will bring the new revised contract amount to \$2,219,594, 16.31% over the original contract price;

**WHEREAS**, the value of the Additional Work necessitated by the Differing Conditions will exceed the limits found in Public Contract Code section 20118.4 for change orders;

**WHEREAS**, notwithstanding Public Contract Code section 20118.4, 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 ... the statute requiring competitive bidding does not apply" (*Hiller v. City of Los Angeles* (1961) 197 Cal.App.2d 685,694);

**WHEREAS**, due to its incremental nature, packaging the Additional Work would be difficult, if not impossible, and submitting it to public bid would inject several months delay into the Project schedule, which would be at the expense of the District;

**WHEREAS**, if the District were to bid the Additional Work, the prices of those bids would be more than the price of Contractor's Change Order because Contractor is already mobilized on the Project and Contractor's costs to perform the Additional Work would remain lower than the prices of other contractors who may bid on the Additional Work;

**WHEREAS**, stopping Work on the Project to bid the Additional Work and paying for the mobilization costs of another contractor to perform the Additional Work would result in waste and delay, which would be at the expense of the District;

**WHEREAS**, awarding the Additional Work to an entity other than the Contractor could create a potential dispute over the warranty for that work and the related work being performed by a separate contractor;

**WHEREAS**, because this work is an integral part of the work that Contractor is already performing such that bringing in a new contractor performing just the Additional Work would result in waste and delay, which would be at the expense of the District;

**WHEREAS**, bidding the Additional Work will not affect the final result to the District except to delay the Project and increase the cost for the aforementioned reasons; and

**WHEREAS**, bidding the Additional Work will not produce an advantage to the District.

**NOW, THEREFORE**, the Board of Education of the Desert Sands Unified School District does hereby resolves, determines, and finds the following:

1. That the foregoing recitals are true and correct.
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 bid the Additional Work.
4. That the District's Board hereby approves **Change Order No. 3** for the performance of the Additional Work without further advertising for or inviting of bids, and authorizes the Superintendent and designees to take all steps and perform all actions necessary to execute and implement that Change Order.

///

///

///

///

**APPROVED, PASSED, AND ADOPTED** by the Board of Education of the Desert Sands Unified School District, on this 12<sup>th</sup> day of April 2022, by the following vote:

AYES:

NOES:

ABSENCE:

ABSTENTIONS:

By: \_\_\_\_\_  
President, Board of Education

By: \_\_\_\_\_  
Vice President, Board of Education

By: \_\_\_\_\_  
Member, Board of Education

By: \_\_\_\_\_  
Member, Board of Education

By: \_\_\_\_\_  
Member, Board of Education