

**RESOLUTION OF MILPITAS UNIFIED SCHOOL DISTRICT  
BOARD OF EDUCATION AUTHORIZING DISTRICT STAFF TO NEGOTIATE  
DIRECTLY FOR CONCRETE SERVICES**

Resolution 2017.02

**WHEREAS**, the District discovered the need for a stabilizing substrate after the commencement of work for the Milpitas High School Track and Field Renovation Project, ("Original Project");

**WHEREAS**, the Original Project cannot continue until the substrate has been completed; and

**WHEREAS**, the substrate work would normally be secured by a competitive bid, pursuant to Public Contract Code section 20111; and

**WHEREAS**, putting the additional substrate work to a competitive bidding will delay the completion of the Original Project for weeks, thereby delaying and disrupting the District's football program and physical education classes ; and

**WHEREAS**, performing a competitive bidding process for the Project would not secure any advantage for the District and would cause the District to incur substantial expenses in delay of the Original Project;

**WHEREAS**, courts have found that public agencies may forego competitive bidding if competitive bidding would be futile or would not otherwise produce an advantage, as found in the cases of *Los Angeles Dredging v. City of Long Beach* (1930) 210 Cal. 350 and *Cobb v. Pasadena City Bd. of Education* (1955) 134 Cal.App.2d 93; and

**WHEREAS**, the District believes it can enter into a competitive and reasonable agreement for construction services by contacting and directly negotiating with a contractor.

**NOW THEREFORE, THE BOARD OF EDUCATION FINDS AS FOLLOWS:**

1. The recitals above are true and correct.
2. The District's substrate work need not be put out competitive bid because such a competitive process would be futile and not produce an advantage for the District.
3. District staff is authorized to enter into an construction services agreement through direct negotiation with a contractor according to the terms deemed necessary by District staff.

**PASSED AND ADOPTED** by the Board of Education of the Milpitas Unified School District at Milpitas, California on July 26, 2016 by the following vote:

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

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

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

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

STATE OF CALIFORNIA       )  
  ) SS  
COUNTY OF SANTA       )  
CLARA

I, Daniel Bobay, Clerk of the Board of Education, do hereby certify that the forgoing is a full, true and correct copy of a resolution duly passed and adopted by said Board at a regularly called and conducted meeting held on said date.

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Clerk of the Board of Education