

**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.

Clerk of the Board of Education