

**SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT
BOARD OF EDUCATION**

**RESOLUTION AUTHORIZING EMERGENCY REPAIR WORK
RELATED TO FLOODING IN BUILDING D AT MALIBU MIDDLE HIGH SCHOOL**

WHEREAS, due to recent fires in and around Malibu and subsequent rainstorms, 6 spaces at Malibu Middle High School Building D have flooded, including 2 classrooms, 1 classroom workroom, 1 teachers' workroom, 1 teachers' lounge, and 1 security office; and

WHEREAS, the flooded areas in Building D at Malibu Middle High School pose health dangers and an immediate risk to life, property, and ongoing operations at Malibu Middle High School; and

WHEREAS, Public Contract Code § 1102 defines an emergency as a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services, including the continuance of existing school classes (Public Contract Code § 20113); and

WHEREAS, the flooded conditions in Building D at Malibu Middle High School constitute an emergency as defined by the Public Contract Code and the emergency will not permit a delay resulting from a competitive solicitation for bids to perform the required repair work, and immediate action is necessary to respond to the emergency; and

WHEREAS, generally, Public Contract Code section 22030 et seq. requires a school district that has opted to comply with the California Uniform Public Construction Cost Accounting Act (Public Contract Code § 22000 et seq.) (the "Act") to informally bid any contract for construction work exceeding \$45,000 in value and to formally bid any contract for construction work exceeding \$175,000 in value; and

WHEREAS, the District has elected to comply with the provisions of the Act; and

WHEREAS, the Act provides that in cases of emergency when repair or replacements are necessary, the District Board may proceed at once to repair or replace any public facility without adopting plans, specifications, strain sheets, or working details, or give notice for bids or to let contracts, and may proceed by day labor or by contractor, or a combination of the two. (Public Contract Code §22035). Similarly, Public Contract Code §20113, authorizes a school district when faced with an emergency and to avoid danger to life or property to proceed with the performance of labor and furnishing of materials by day labor or force account to address and repair the conditions of the emergency; and

WHEREAS, the Act provides further that emergency work under Public Contract Code §22035 must be done pursuant to the terms of Public Contract Code § 22050; and

WHEREAS, Public Contract Code § 22050 requires the following steps be taken:

- (1) Pursuant to a four-fifths (4/5) vote of the Board, the District may repair or replace a public facility, take any directly related and immediate action required

by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts; and

- (2) Before taking any action pursuant to paragraph (1), the Board shall make a finding, based on substantial evidence set forth in the minutes of its meeting, that the emergency will not permit a delay resulting from a competitive solicitation for bids, and that the action is necessary to respond to the emergency; and
- (3) The Board, by a four-fifths (4/5) vote, may delegate the District Superintendent and/or designee, the authority to order any action pursuant to paragraph (1); and
- (4) If a person with authority delegated pursuant to paragraph (3) orders any action specified in paragraph (1), that person shall report to the Board, at its next meeting required pursuant to this section, the reasons justifying why the emergency will not permit a delay resulting from a competitive solicitation for bids and why the action is necessary to respond to the emergency; and
- (5) If the Board orders any action specified above, the Board shall review the emergency action at its next regularly scheduled meeting and, except as specified below, at every regularly scheduled meeting thereafter until the action is terminated, to determine, by a four-fifths (4/5) vote, that there is a need to continue the action. If the Board meets weekly, it may review the emergency action in accordance with this paragraph every 14 days; and
- (6) If a person with delegated authority orders any action specified in paragraph (1), the Board shall initially review the emergency action not later than 7 days after the action, or at its next regularly scheduled meeting if that meeting will occur not later than 14 days after the action, and at least at every regularly scheduled meeting thereafter until the action is terminated, to determine, by a four-fifths (4/5) vote, that there is a need to continue the action, unless a person with delegated authority has terminated that action prior to the Board reviewing the emergency action and making a determination pursuant to this subdivision. If the Board meets weekly, it may, after the initial review, review the emergency action in accordance with this paragraph every 14 days; and
- (7) When the Board reviews the emergency action, it shall terminate the action at the earliest possible date that conditions warrant so that the remainder of the emergency action may be completed by giving notice for bids to let contracts; and

WHEREAS, immediate action must be taken by the District in Building D at Malibu Middle High School including, without limitation, the following:

1. Demolition of the flooded areas, including flooring and adjacent walls; and
2. Mitigating further damage; and

3. Making necessary immediate repairs; and

WHEREAS, the repair work caused by the flooding must be performed without delay to respond to the emergency and to (1) mitigate danger to students, faculty and staff; (2) mitigate further damage to the District's facilities; and (3) minimize the disruption of classes at Malibu Middle High School.

NOW THEREFORE, the governing Board of the Santa Monica-Malibu Unified School District hereby finds, determines, declares, orders, and resolves as follows:

1. That the above recitals are true and correct; and
2. That the flooding damage in Building D at Malibu Middle High School is an emergency as defined by applicable statute(s) ("Emergency"); and
3. The circumstances of the Emergency necessitate that repair work related to the Emergency be let without a competitive solicitation for bids to respond to the Emergency; and
4. That the District's Superintendent or designee is authorized to use day labor or force account or execute contracts or change orders, as appropriate and as necessary to perform demolition and repair work related to the Emergency, without further advertising for or inviting of bids, and to take all steps and perform all actions necessary; and
5. That District staff report on the status of this Emergency to the District's Board at the Board's next regularly scheduled Board meeting and at all subsequent regularly scheduled Board meetings until the Board terminates the Emergency action.

PASSED AND ADOPTED this 13th day of December 2018, by the Governing Board of the Santa Monica-Malibu Unified School District of Los Angeles County, California, by the following vote:

AYES: _____ NOES: _____ ABSENT: _____ ABSTAIN: _____

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

I, Dr. Richard Tahvildaran-Jesswein, of the Governing Board of the Santa Monica-Malibu Unified School District of Los Angeles County, California, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the said Board at a regular Meeting thereof held at its regular place of meeting at the time and by the vote above stated, which resolution is on file in the office of the said Board.

Board President