



**CAMBRIAN SCHOOL DISTRICT**

**Board of Trustees**

**Resolution No. 22-23-15**

**DECLARING THE FUTILITY OF PUBLIC BIDDING FOR  
PLUMBING TRADE SERVICES FOR PHASE 1 MODERNIZATIONS AT FARNHAM  
ELEMENTARY SCHOOL AND SARTORETTE ELEMENTARY SCHOOL  
AND APPROVING A CHANGE ORDER FOR THAT WORK**

**WHEREAS**, the Board of Trustees (“Board”) of the Cambrian School District (“District”) formally and publicly opened bids for Bid Package G – Plumbing Trades (“Bid Package G”) for the Phase 1 Modernizations at Farnham Elementary School and Sartorette Elementary School Project (“Project”), located at Farnham Elementary School, 15711 Woodard Road, San Jose, CA 95124; and Sartorette Elementary School, 3850 Woodford Drive, San Jose, CA 95124; and

**WHEREAS**, of the two (2) bids submitted for Bid Package G, Stephen Ciari Plumbing & Heating was determined to be the lowest responsive responsible bidder, and on March 17th, 2022, the Board awarded a contract to perform the work for Bid Package G on the Project in the amount of Four Hundred Ninety-Five Thousand One Hundred Seventy-Three Dollars (\$495,173.00); and

**WHEREAS**, since commencement of the Project, accessibility (ADA) upgrades on campus were required for state certification of said project, including a new drinking fountain at each campus to meet percentage of accessible and standing height drinking fountains (PCOs #054, #055 from CO #5G); and

**WHEREAS**, by virtue of its design and function, the Additional Work is integral and inseparable from, and inherent to, the work already in progress on the Project; and

**WHEREAS**, the Contractor issued documentation supporting final pricing for the integral and additional necessary plumbing work to the Phase 1 Modernizations at Farnham Elementary School and Sartorette Elementary School Project via PCOs #054, #055 from CO #5G totaling \$23,362.42, which brings the total current cost of all approved and pending change orders to \$55,042.82 (11.12% of the original contract amount); and

**WHEREAS**, District staff have concluded that Stephen Ciari Plumbing & Heating CO #5G cost is reasonable; and

**WHEREAS**, requesting bids for the Additional and Changed Work, and having another contractor perform the adjusted Work, would result in waste and delay on the Project, which would ultimately be at the expense of the District; and

**WHEREAS**, bringing in a new Contractor to perform the Additional and Changed Work would have created coordination and interference problems at the Project, for example, the need to perform the work within the same area, and would expose the District to liability for delay and/or disruption damages; and

**WHEREAS**, bringing in a new contractor to perform the Additional Work could have created a potential dispute over the warranty for that work and the surrounding work being performed by the Contractor; and

**WHEREAS**, bringing in a new contractor (or contractors) to perform the Bid Package G Work pursuant to the Project adjustments would potentially expose the District to significant cost increase, since Stephen Ciari Plumbing & Heating is already familiar with and mobilized on the Project site and any other bids are likely to result in increased costs to the District; and

**WHEREAS**, it is imperative to perform the Additional Work immediately to prevent delay to the Project and its certification, which may expose the District to a significant increase in cost or interference with future projects; and

**WHEREAS**, California courts allow a narrow exception to the public bidding law in circumstances in which public bidding would be futile, undesirable or impractical and would cause additional delay and additional cost; (See, e.g., 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.); and

**WHEREAS**, notwithstanding the requirements of Public Contract Code sections 20111(b) or 20118.4(a), California law provides that, “[w]here competitive proposals work an incongruity and are unavailing 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); and

**WHEREAS**, bidding the Additional Work for Bid Package G will not affect the final result to the District except to further increase the cost of the Project; and

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

**NOW THEREFORE**, the Governing Board of the Cambrian School District hereby resolves, determines, and finds the following

- Section 1.** That the above recitals are true and correct.
- Section 2.** For the reasons stated above, public bidding of the Additional Work for Project Bid Package G would not produce an advantage to the District, and would produce a net burden and distinct disadvantages to the District.
- Section 3.** That based on the foregoing, it would be incongruous, futile, and unavailing to attempt to bid the Additional Work for Project Bid Package G.
- Section 4.** The Board hereby approves of Change Order #5G to perform the Additional Work, without further advertising for or inviting of bids.
- Section 5.** The Board hereby authorizes the District’s Superintendent, or her designee, to take all steps and perform all actions necessary to execute and implement Stephen Ciari Plumbing & Heating’s CO #5G.

**PASSED AND ADOPTED** by the Board of Trustees of the Cambrian School District of the Santa Clara County, State of California, on this 15<sup>th</sup> day of December 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

I certify that the foregoing resolution was duly introduced, passed, and adopted as stated.

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Kristi Schwiebert, Secretary to Board  
Superintendent  
Cambrian School District