

**GROSSMONT-CUYAMACA COMMUNITY COLLEGE DISTRICT
RESOLUTION NO. 20-011**

**RESOLUTION DECLARING THE FUTILITY OF PUBLIC BIDDING FOR REPAIR OF
GROSSMONT COLLEGE PARKING STRUCTURE**

WHEREAS, on August 16, 2004, the Grossmont-Cuyamaca Community College District (hereinafter, the “District”) entered into a written contract with International Parking Design, Inc. (hereinafter “IPD”), Architect, for professional architectural services and IPD subsequently prepared the design plans for the construction of the Grossmont College Parking Structure;

WHEREAS, on June 26, 2008, as a result of formal public bidding, the District entered into a written contract with McCarthy Building Companies, Inc. (hereinafter “McCarthy”), General Contractor, to construct the Grossmont College Parking Structure in accordance with the plans prepared by IPD;

WHEREAS, the District has discovered a problem on the south side of the column of the Grossmont College Parking Structure that has led to cracking, water damage, and corrosion (hereafter, referred to as the “Defect”). The Defect was not discoverable by reasonable and customary inspection at the time the Parking Structure was constructed and the District had no knowledge of the Defect until approximately 2018;

WHEREAS, the cause of the Defect is unknown, and McCarthy and IPD wholly dispute any liability or culpability for the Defect and maintain that they exercised a reasonable degree of care and employed all the skills and knowledge ordinarily used in similar endeavors;

WHEREAS, the District, McCarthy, and IPD have each independently inspected the Defect and agree on the appropriate work needed to repair it (hereafter, the “Repair Work”);

WHEREAS, the District, McCarthy, and IPD (hereafter, the “Parties”) have entered into a Final Settlement Agreement and Release of all Claims (hereafter, “Final Settlement Agreement”) whereby the Parties have agreed to equally split the cost of the Repair Work;

WHEREAS, because the Repair Work involves the repair of a public building, this is a “public project” as defined by Public Contract Code § 20161 and therefore it is generally subject to competitive bidding requirements;

WHEREAS, California courts allow a narrow exception to public bidding laws in circumstances in which public bidding would not produce a competitive advantage or where they are futile, undesirable or impractical and would cause additional delay and additional cost (*Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631; *Los Angeles Dredging Company v. City of Long Beach* (1930) 2 Cal. 348.)

WHEREAS, California law provides that, “Where 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).

WHEREAS, it is in the best interest of the District to fully and finally settle and resolve all claims and liability between the Parties regarding the subject Defect. Entering into a settlement agreement for the Repair Work allows the Defect to be timely and adequately repaired at a fraction of the cost to the District. By contrast, competitively bidding the repair work would require the District to incur the entire cost of the Repair Work and pursue lengthy and expensive litigation to recover its damages without a guarantee of success.

WHEREAS, competitively bidding the Repair Work will not produce a competitive advantage to the District because:

- Competitive bidding will not result in a cost savings. The total cost of the Repair Work is one hundred and seventy five thousand dollars (\$175,000). If the District were to competitively bid the Repair Work, the District estimates it would be required to pay at least one hundred and seventy five thousand dollars (\$175,000) to another contractor. By contrast, pursuant to the terms of the Final Settlement Agreement, the District will only be required to pay fifty-eight thousand, three hundred and thirty-three dollars and thirty-three cents (\$58,333.33) for the Repair Work.
- Competitive bidding will unnecessarily delay the repair of the Defect. If a new contractor and/or architect was brought in to perform the Repair Work, it would also result in waste and delay, at the expense of the District and prolong the damaged condition of the public property. By contrast, pursuant to the terms of the Final Settlement Agreement, the Repair Work shall commence on or before June 2020.

WHEREAS, based upon all available information, and the evaluations and recommendations of District staff, the Board hereby determines that it is in the best interest of the District to award the contract for Repair Work to McCarthy Building Companies, Inc. without competitively bidding such work;

NOW, THEREFORE, the Board of Trustees of the Grossmont-Cuyamaca Community College District hereby resolves, determines, and finds the following:

1. All of the recitals herein contained are true and correct;
2. For the reasons stated above, it is in the best interests of the District to enter into a contract for the Repair Work because public bidding would not provide a competitive advantage, and would produce a net burden and distinct disadvantages to the District;
3. It would be undesirable, impractical, futile, and unavailing to publicly bid the Repair Work;
and

4. The District hereby approves the award of a contract to McCarthy Building Companies, Inc. to perform the Repair Work.

PASSED AND ADOPTED by the Board of Trustees of the Grossmont-Cuyamaca Community College District, County of San Diego, State of California, this 19th day of May 2020 by the following vote:

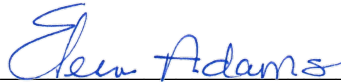
AYES: Adams, Cartwright, Garrett, Justeson, Monroe

NOES: None

ABSTAINED: None

ABSENT: None

I, Elena Adams, Clerk of the Governing Board, do hereby certify that the foregoing is a full, true, and correct copy of the Resolution passed and adopted by the Board at a regularly scheduled and conducted meeting held on this date, which Resolution shall be kept on file in the office of the Board.



Elena Adams

Clerk of the Governing Board