Subject:	**Attachment:**
Adopt Sole Source Exceptions Findings; and Resolution No. Resolution No. 20-18/19	**1. Resolution No. 20-18/19** **2. Exhibits A-1 through A-8 (PMO and Staff Reports and Recommendations);** **3. Exhibits B-1 through B-8 (Architect and Engineer Reports and Recommendations); and** **4. Exhibit C (Legal Report and Recommendations)**
Category: **Action Items**	**Type of Board Consideration:** **Information Consent Action** ✓
Recommended: **Tim Flood** **Vice President, Administrative Services**	**Approved for Consideration:** **Sunita V. Cooke, Ph.D.** **Superintendent/President**

BACKGROUND

District staff and Kitchell CEM, Inc. ("PMO") have evaluated eight additional items as exceptions as permitted by Public Contract Code section 3400 (c) (2) as described and identified herein below. Exhibits A-1 through A-8, submitted herewith, are the facilities staff and Program Management Office's ("PMO") "Facility Justification Transmittals" each containing staff and the PMO's reports and recommendations for each proposed item.

Steinberg Hart (Architects) has reviewed the eight potential items identified by staff and the PMO and has submitted herewith eight letters containing the architect's reports and recommendations for each proposed item. Exhibits B-1 through B-3 are submitted herewith.

Staff, the PMO, Steinberg Hart (Architects), and outside legal counsel, John P. Dacey have evaluated the eight potential items against the following factors:

(i) what particular materials, products, things, systems, or services are currently in use or being placed in use throughout the District;
(ii) where in the District the existing particular materials, products, things, systems, or services are currently in use or being placed in use throughout the District;
(iii) how long they have been in use and the District's dependency/reliance on them;
(iv) whether there have been any significant operational and/or maintenance issues;
(v) the current life/longevity of the existing particular materials, products, things, systems, or services;
(vi) the need to have a totally integrated/compatible particular material, product, thing, system, or service;
(vii) security, safety and related reason concerns;

(viii) where the new particular materials, products, things, systems, or services will be installed; and
(ix) what negative resulting consequences (cost, maintenance, safety, security, or otherwise) are likely to occur if different materials, products, things, systems, or services are put in place.

The eight potential items are as follows:

#	Proposed Item and Manufacturer	Exception under PCC section 3400
1.	IAS Graphical User Interface Software	PCC section 3400 (c) (2)
2.	IAS Fault Detection & Diagnostic Software	PCC section 3400 (c) (2)
3.	IAS Event Automation Software	PCC section 3400 (c) (2)
4.	Clow Wet Barrel Fire Hydrant	PCC section 3400 (c) (2)
5.	Clow Resilient Wedge Gate Valves	PCC section 3400 (c) (2)
6.	Ford/A.Y. McDonald Ball Valve Curb Stops	PCC section 3400 (c) (2)
7.	Zurn Wilkins Back Flow Devices	PCC section 3400 (c) (2)
8.	Zurn Wilkins Fire Service Backflow Device	PCC section 3400 (c) (2)

The eight potential items are being proposed for use on all applicable future Measure MM projects.

STATUS

Outside legal counsel for the district, John P. Dacey, Esq., Bergman Dacey Goldsmith, PLC, has reviewed and evaluated the eight potential items referenced in Exhibits A-1 through A-8 and in Exhibits B-1 through B-8, measured the contents thereof against the foregoing factors and the requirements of Public Contract Code section 3400, and the exception found within Public Contract Code section 3400 (c) (2). Mr. Dacey has concluded that all eight proposed items meet the requirements of the aforesaid statute as set forth in his legal memorandum submitted herewith as Exhibit C.

RECOMMENDATION

1. Adopt Sole Source Exceptions Findings specified in Exhibits A-1 through A-8 and in B-1 through B-8; and
2. Approve Resolution No. 20-18/19 set forth below.

RESOLUTION No. 20-18/19

WHEREAS, the Board of Trustees of the MiraCosta Community College District ("District") have been requested to make a finding and approve as an exception pursuant to Public Contract Code Section 3400 (c) (2) 3 items as further identified hereinbelow for Measure MM projects;

WHEREAS, Public Contract Code section 3400 provides, in pertinent part, that:

"(a) The Legislature finds and declares that it is the intent of this section to encourage contractors and manufacturers to develop and implement new and ingenious materials, products, and services that function as well, in all essential respects, as materials, products, and services that are required by a contract, but at a lower cost to taxpayers.

(b) No agency of the state, nor any political subdivision, municipal corporation, or district, nor any public officer or person charged with the letting of contracts for the construction, alteration, or repair of public works, shall draft or cause to be drafted specifications for bids, in connection with the construction, alteration, or repair of public works, (1) in a manner that limits the bidding, directly or indirectly, to any one specific concern, or (2) calling for a designated material, product, thing, or service by specific brand or trade name unless the specification is followed by the words "or equal" so that bidders may furnish any equal material, product, thing, or service. In applying this section, the specifying agency shall, if aware of an equal product manufactured in this state, name that product in the specification. Specifications shall provide a period of time prior to or after, or prior to and after, the award of the contract for submission of data substantiating a request for a substitution of "an equal" item. If no time period is specified, data may be submitted any time within 35 days after the award of the contract.

(c) Subdivision (b) is not applicable if the awarding authority, or its designee, makes a finding that is described in the invitation for bids or request for proposals that a particular material, product, thing, or service is designated by specific brand or trade name for any of the following purposes:

……

(2) In order to match other products in use on a particular public improvement either completed or in the course of completion." (emphasis added);

WHEREAS, District Staff and the Program Management Office ("PMO") have evaluated eight potential exceptions as permitted by the above referenced statute as described in Exhibits A-1 through A-8 thereto ("Facility Justification Transmittals") submitted to the Board with this Resolution;

WHEREAS, Steinberg Hart (Architects) have reviewed Exhibits A-1 through A-8 and have submitted to the Board with this Resolution their eight Letters/Reports (Exhibits B-1 through B-8) concurring in the findings and recommendations made by District Staff and the PMO;

WHEREAS, outside legal counsel for the District, John P. Dacey, Esq., Bergman Dacey Goldsmith, PLC, has reviewed and evaluated: the eight proposed items; Exhibits A-1 through A-8; and Exhibits B-1 through B-8; and measured the contents thereof against the requirements of the applicable statute for the suggested exception and has determined that all eight proposed items meet the requirements on the aforesaid statute as set forth in the Legal Memorandum submitted with this Resolution (Exhibit C);

WHEREAS, the eight proposed items, and corresponding exceptions, are identified as:

#	Proposed Item and Manufacturer	Exception under PCC section 3400
1.	IAS Graphical User Interface	**PCC section 3400 (c) (2)**
2.	IAS Fault Detection & Diagnostic Software	**PCC section 3400 (c) (2)**
3.	IAS Event Automation Software	**PCC section 3400 (c) (2)**
4.	Clow Wet Barrel Fire Hydrant	**PCC section 3400 (c) (2)**
5.	Clow Resilient Wedge Gate Valves	**PCC section 3400 (c) (2)**
6.	Ford/A.Y. McDonald Curb Stops	**PCC section 3400 (c) (2)**
7.	Zurn Wilkins Backflow Devices	**PCC section 3400 (c) (2)**
8.	Zurn Wilkins Fire Service Backflow Devices	**PCC section 3400 (c) (2)**

WHEREAS, applicable law requires the Board to make certain findings under Public Contract Code section 3400 to use the exceptions found therein;

NOW THEREFORE BE IT RESOLVED THAT:

1. The Board has considered: (i) each of the eight proposed items separately; (ii) the factual findings and recommendations of District Staff and the Program Management Office regarding the eight proposed items identified above as set forth in Exhibits A-1 through A-8; (iii) the statements and recommendations of Steinberg Hart (Architects) as set forth in Exhibits B-1 through B-8; and (iv) the Legal Memorandum of outside legal counsel (Exhibit C), and hereby adopts the findings and conclusions in all of the foregoing as the Board's own findings and conclusions;

2. The Board accepts and approves the recommendations submitted by District Staff, the PMO; Steinberg Hart (Architects); and outside legal counsel;

3. The Board finds and approves, as an exception pursuant to Public Contract Code Section 3400 (c)(2) as stated above, each of the eight items identified herein above and its/their subsequent and/or replacement: model, part number, or system from the specified manufacturer, for use in the District's Measure MM projects; and

4. The Board directs District Staff and the PMO to include a copy of this Resolution in all future procurement Notices Inviting Bids and/or Requests for Proposals that will involve said items for District Measure MM projects.

DATED, SIGNED AND APPROVED this 16th day of May 2019.

BOARD OF TRUSTEES OF THE
MIRACOSTA COMMUNITY COLLEGE DISTRICT

By:_____
David Broad, President,
Board of Trustees

Attest:

By:_____
Sunita V. Cooke, Ph.D.,
Secretary, Board of Trustees

STATE OF CALIFORNIA)
)ss
SAN DIEGO COUNTY)

I, Sunita V. Cooke, Ph.D., do hereby certify that the foregoing is a true and correct copy of Resolution No. 20-18/19, which was duly adopted by the Board of Trustees of the MiraCosta Community College District at a meeting thereof held on the 16th day of May 2019, and that it was so adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

By_____
Sunita V. Cooke, Ph.D.
Superintendent President

RESOLUTION No. 20-18/19

WHEREAS, the Board of Trustees of the MiraCosta Community College District ("District") have been requested to make a finding and approve as an exception pursuant to Public Contract Code Section 3400 (c) (2) 3 items as further identified hereinbelow for Measure MM projects;

WHEREAS, Public Contract Code section 3400 provides, in pertinent part, that:

"(a) The Legislature finds and declares that it is the intent of this section to encourage contractors and manufacturers to develop and implement new and ingenious materials, products, and services that function as well, in all essential respects, as materials, products, and services that are required by a contract, but at a lower cost to taxpayers.

(b) No agency of the state, nor any political subdivision, municipal corporation, or district, nor any public officer or person charged with the letting of contracts for the construction, alteration, or repair of public works, shall draft or cause to be drafted specifications for bids, in connection with the construction, alteration, or repair of public works, (1) in a manner that limits the bidding, directly or indirectly, to any one specific concern, or (2) calling for a designated material, product, thing, or service by specific brand or trade name unless the specification is followed by the words "or equal" so that bidders may furnish any equal material, product, thing, or service. In applying this section, the specifying agency shall, if aware of an equal product manufactured in this state, name that product in the specification. Specifications shall provide a period of time prior to or after, or prior to and after, the award of the contract for submission of data substantiating a request for a substitution of "an equal" item. If no time period is specified, data may be submitted any time within 35 days after the award of the contract.

(c) Subdivision (b) is not applicable if the awarding authority, or its designee, makes a finding that is described in the invitation for bids or request for proposals that a particular material, product, thing, or service is designated by specific brand or trade name for any of the following purposes:

.....

(2) In order to match other products in use on a particular public improvement either completed or in the course of completion." (emphasis added);

WHEREAS, District Staff and the Program Management Office ("PMO") have evaluated eight potential exceptions as permitted by the above referenced statute as described in Exhibits A-1 through A-8 thereto ("Facility Justification Transmittals") submitted to the Board with this Resolution;

WHEREAS, Steinberg Hart (Architects) have reviewed Exhibits A-1 through A-8 and have submitted to the Board with this Resolution their eight Letters/Reports (Exhibits B-1 through B-8) concurring in the findings and recommendations made by District Staff and the PMO;

WHEREAS, outside legal counsel for the District, John P. Dacey, Esq., Bergman Dacey Goldsmith, PLC, has reviewed and evaluated: the eight proposed items; Exhibits A-1 through A-8; and Exhibits B-1 through B-8; and measured the contents thereof against the requirements of the applicable statute for the suggested exception and has

determined that all eight proposed items meet the requirements on the aforesaid statute as set forth in the Legal Memorandum submitted with this Resolution (Exhibit C);

WHEREAS, the eight proposed items, and corresponding exceptions, are identified as:

#	Proposed Item and Manufacturer	Exception under PCC section 3400
1.	IAS Graphical User Interface	PCC section 3400 (c) (2)
2.	IAS Fault Detection & Diagnostic Software	PCC section 3400 (c) (2)
3.	IAS Event Automation Software	PCC section 3400 (c) (2)
4.	Clow Wet Barrel Fire Hydrant	PCC section 3400 (c) (2)
5.	Clow Resilient Wedge Gate Valves	PCC section 3400 (c) (2)
6.	Ford/A.Y. McDonald Curb Stops	PCC section 3400 (c) (2)
7.	Zurn Wilkins Backflow Devices	PCC section 3400 (c) (2)
8.	Zurn Wilkins Fire Service Backflow Devices	PCC section 3400 (c) (2)

WHEREAS, applicable law requires the Board to make certain findings under Public Contract Code section 3400 to use the exceptions found therein;

NOW THEREFORE BE IT RESOLVED THAT:

1. The Board has considered: (i) each of the eight proposed items separately; (ii) the factual findings and recommendations of District Staff and the Program Management Office regarding the eight proposed items identified above as set forth in Exhibits A-1 through A-8; (iii) the statements and recommendations of Steinberg Hart (Architects) as set forth in Exhibits B-1 through B-8; and (iv) the Legal Memorandum of outside legal counsel (Exhibit C), and hereby adopts the findings and conclusions in all of the foregoing as the Board's own findings and conclusions;

2. The Board accepts and approves the recommendations submitted by District Staff, the PMO; Steinberg Hart (Architects); and outside legal counsel;

3. The Board finds and approves, as an exception pursuant to Public Contract Code Section 3400 (c)(2) as stated above, each of the eight items identified herein above and its/their subsequent and/or replacement: model, part number, or system from the specified manufacturer, for use in the District's Measure MM projects; and

4. The Board directs District Staff and the PMO to include a copy of this Resolution in all future procurement Notices Inviting Bids and/or Requests for Proposals that will involve said items for District Measure MM projects.

DATED, SIGNED AND APPROVED this 16th day of May 2019.

BOARD OF TRUSTEES OF THE
MIRACOSTA COMMUNITY COLLEGE DISTRICT

By:_____
David Broad, President,
Board of Trustees

Attest:

By:_____
Sunita V. Cooke, Ph.D.,
Secretary, Board of Trustees

STATE OF CALIFORNIA)
)ss
SAN DIEGO COUNTY)

I, Sunita V. Cooke, Ph.D., do hereby certify that the foregoing is a true and correct copy of Resolution No. 20-18/19, which was duly adopted by the Board of Trustees of the MiraCosta Community College District at a meeting thereof held on the 16th day of May 2019, and that it was so adopted by the following vote:

AYES: 6 Broad, Cassar, Fischer, McNeil, Merchat, Simon

NOES: 0

ABSENT: 1 Peavoza

ABSTENTIONS: 0

By_____
Sunita V. Cooke, Ph.D., Superintendent President