Subject:	Attachment:
Adopt Sole Source Exceptions Findings and Resolution 4-18/19	1. Legal Report and Recommendations 2. Exhibits A-1 through A-25 (PMO and Staff Report and Recommendations) 3. Exhibits B-1 through B-25 Architect and Engineer Report and Recommendations
Category: **Action Items**	**Type of Board Consideration:** **Information** **Consent** **Action** ✔
Recommended: **Charlie Ng, Vice President** **Business and Administrative Services**	**Approved for Consideration:** **Sunita V. Cooke, Ph.D.** **Superintendent/President**

BACKGROUND

District staff and Kitchell CEM, Inc. ("PMO") have evaluated 25 potential items as exceptions as permitted by Public Contract Code section 3400 (c) (2) as described and identified herein below. Exhibits A-1 through A-25 ("Staff and PMO Reports and Recommendations") submitted herewith set forth the justifications for each proposed item.

Steinberg Hart (architects) has reviewed the 25 potential items identified by staff and the PMO and has submitted herewith 25 Letters/Memorandums as Exhibits B-1 through B-25 hereto (attachments).

Staff, the PMO, Steinberg Hart (architects), and outside legal counsel John P. Dacey have evaluated the 25 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 25 potential items are as follows:

#	Proposed Item and Manufacturer	Exception under PCC section 3400
1.	Access Control Alarm Readers (HID)	**PCC section 3400 (c) (2)**
2.	Access Control Boards (Lenel)	**PCC section 3400 (c) (2)**
3.	Auto Door Operator (LCN)	**PCC section 3400 (c) (2)**
4.	Exterior Parking and Street Lights (CREE)	**PCC section 3400 (c) (2)**
5.	Exterior Site Lights (Selux)	**PCC section 3400 (c) (2)**
6.	Exterior Wall Packs (McGraw-Edison)	**PCC section 3400 (c) (2)**
7.	Fire Alarm Panels (Notifier)	**PCC section 3400 (c) (2)**
8.	Flow Communication (Weathermatic)	**PCC section 3400 (c) (2)**
9.	Flow Sensors (Weathermatic)	**PCC section 3400 (c) (2)**
10.	HVAC Building Controllers (Tridium)	**PCC section 3400 (c) (2)**
11.	HVAC Field Level Controllers (Siemens TEC)	**PCC section 3400 (c) (2)**
12.	Interior Exterior Lighting Controllers (Nlight)	**PCC section 3400 (c) (2)**
13.	Interior Troffers (Lithonia)	**PCC section 3400 (c) (2)**
14.	Irrigation Controllers (Weathermatic)	**PCC section 3400 (c) (2)**
15.	Irrigation Valves (Weathermatic)	**PCC section 3400 (c) (2)**
16.	Mortise Locks (Schlage)	**PCC section 3400 (c) (2)**
17.	Panic Locking Hardware (Von Duprin)	**PCC section 3400 (c) (2)**
18.	Quick Coupling Valves (Rainbird)	**PCC section 3400 (c) (2)**
19.	Security Panels (Bosch)	**PCC section 3400 (c) (2)**
20.	Thermostats (Siemens)	**PCC section 3400 (c) (2)**
21.	Valve Manifold Boxes (Carson)	**PCC section 3400 (c) (2)**
22.	Weather Sensors (Weathermatic)	**PCC section 3400 (c) (2)**
23.	Wire Connectors (Spears)	**PCC section 3400 (c) (2)**
24.	Wireless Clocks (Innovation)	**PCC section 3400 (c) (2)**
25.	Wireless Clocks Transmitters (Innovation)	**PCC section 3400 (c) (2)**

The 25 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 25 potential items, Exhibits A-1 through A-25, and Exhibits B-1 through B-25 and 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). Mr. Dacey has concluded that all 25 proposed items meet the requirements of the aforesaid statute, as set forth in the legal memorandum submitted herewith.

RECOMMENDATION

Adopt sole source exceptions findings and Resolution 4-18/19, as stated above.

MIRACOSTA COMMUNITY COLLEGE DISTRICT
RESOLUTION NO. 4-18/19

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) 25 certain materials, products, services, and/or systems 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 have evaluated 25 potential exceptions as permitted by the above referenced statute as described in Exhibits A-1 through A-25 thereto ("Staff and PMO Reports and Recommendations") submitted to the board with this Resolution;

WHEREAS, Steinberg Hart (architects) have reviewed Exhibits A-1 through A-25 thereto and have submitted to the board with this Resolution their 25 Letters/Memorandums (Exhibits B-1 through B-25) concurring in the findings and recommendations made by District Staff and the Program Management Office;

WHEREAS, outside legal counsel for the District, John P. Dacey, Esq., Bergman Dacey Goldsmith, PLC, has reviewed and evaluated the 25 proposed items, Exhibits A-1 through A-25, and Exhibits B-1 through B-25, and measured the contents thereof against the requirements of the applicable statute for the suggested exceptions and has determined that all 25 proposed exceptions meet the requirements on the aforesaid statute as set forth in the legal memorandum submitted with this Resolution.

WHEREAS, the 25 proposed items, and corresponding exceptions, are identified as:

#	Proposed Item and Manufacturer	Exception under PCC section 3400
1.	Access Control Alarm Readers (HID)	**PCC section 3400 (c) (2)**
2.	Access Control Boards (Lenel)	**PCC section 3400 (c) (2)**
3.	Auto Door Operator (LCN)	**PCC section 3400 (c) (2)**
4.	Exterior Parking and Street Lights (CREE)	**PCC section 3400 (c) (2)**
5.	Exterior Site Lights (Selux)	**PCC section 3400 (c) (2)**
6.	Exterior Wall Packs (McGraw-Edison)	**PCC section 3400 (c) (2)**
7.	Fire Alarm Panels (Notifier)	**PCC section 3400 (c) (2)**
8.	Flow Communication (Weathermatic)	**PCC section 3400 (c) (2)**
9.	Flow Sensors (Weathermatic)	**PCC section 3400 (c) (2)**
10.	HVAC Building Controllers (Tridium)	**PCC section 3400 (c) (2)**
11.	HVAC Field Level Controllers (Siemens TEC)	**PCC section 3400 (c) (2)**
12.	Interior Exterior Lighting Controllers (Nlight)	**PCC section 3400 (c) (2)**
13.	Interior Troffers (Lithonia)	**PCC section 3400 (c) (2)**
14.	Irrigation Controllers (Weathermatic)	**PCC section 3400 (c) (2)**
15.	Irrigation Valves (Weathermatic)	**PCC section 3400 (c) (2)**
16.	Mortise Locks (Schlage)	**PCC section 3400 (c) (2)**
17.	Panic Locking Hardware (Von Duprin)	**PCC section 3400 (c) (2)**
18.	Quick Coupling Valves (Rainbird)	**PCC section 3400 (c) (2)**
19.	Security Panels (Bosch)	**PCC section 3400 (c) (2)**
20.	Thermostats (Siemens)	**PCC section 3400 (c) (2)**
21.	Valve Manifold Boxes (Carson)	**PCC section 3400 (c) (2)**
22.	Weather Sensors (Weathermatic)	**PCC section 3400 (c) (2)**
23.	Wire Connectors (Spears)	**PCC section 3400 (c) (2)**
24.	Wireless Clocks (Innovation)	**PCC section 3400 (c) (2)**
25.	Wireless Clocks Transmitters (Innovation)	**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 25 proposed items separately; (ii) the factual findings and recommendations of district staff and the Program Management Office regarding the 25 proposed items identified above as set forth in Exhibits A-1 through A-25; (iii) the statements and recommendations of Steinberg Hart (architects) as set forth in Exhibits B-1 through B-25; and (iv) the legal memorandum of outside legal counsel, 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 Program Management Office; 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 25 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 Program Management Office to include this resolution in all future procurement notices inviting bids and/or requests for proposals that will involve said materials, products, services, and/or systems for district Measure MM projects.

5. DATED, SIGNED AND APPROVED this 18th day of October 2018.

BOARD OF TRUSTEES OF THE
MIRACOSTA COMMUNITY COLLEGE DISTRICT

By:_____
David Broad, Ph.D.
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. 4-18/19, which was duly adopted by the Board of Trustees of the MiraCosta Community College District at a meeting thereof held on the 18th day of October 2018, and that it was so adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

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

MIRACOSTA COMMUNITY COLLEGE DISTRICT
RESOLUTION NO. 4-18/19

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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:

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(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 have evaluated 25 potential exceptions as permitted by the above referenced statute as described in Exhibits A-1 through A-25 thereto ("Staff and PMO Reports and Recommendations") submitted to the board with this Resolution;

WHEREAS, Steinberg Hart (architects) have reviewed Exhibits A-1 through A-25 thereto and have submitted to the board with this Resolution their 25 Letters/Memorandums (Exhibits B-1 through B-25) concurring in the findings and recommendations made by District Staff and the Program Management Office;

WHEREAS, outside legal counsel for the District, John P. Dacey, Esq., Bergman Dacey Goldsmith, PLC, has reviewed and evaluated the 25 proposed items, Exhibits A-1 through A-25, and Exhibits B-1 through B-25, and measured the contents thereof against the requirements of the applicable statute for the suggested exceptions and has determined that all 25 proposed exceptions meet the requirements on the aforesaid statute as set forth in the legal memorandum submitted with this Resolution.

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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 25 proposed items separately; (ii) the factual findings and recommendations of district staff and the Program Management Office regarding the 25 proposed items identified above as set forth in Exhibits A-1 through A-25; (iii) the statements and recommendations of Steinberg Hart (architects) as set forth in Exhibits B-1 through B-25; and (iv) the legal memorandum of outside legal counsel, 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 Program Management Office; 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 25 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

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5. DATED, SIGNED AND APPROVED this 18th day of October 2018.

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MIRACOSTA COMMUNITY COLLEGE DISTRICT

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President, Board of Trustees

Attest:

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Sunita V. Cooke, Ph.D.
Secretary, Board of Trustees

STATE OF CALIFORNIA)
) ss
SAN DIEGO COUNTY)

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AYES: 7 Broad, Cassar, Fischer, McNeil, Merchat, Pedroza, Simon

NOES: 0

ABSENT: 0

ABSTENTIONS: 0

By_____
Sunita V. Cooke, Ph.D
Superintendent President