MIRACOSTA COMMUNITY COLLEGE DISTRICT

RESOLUTION NO. 8-19/20
ADOPTION OF SOLE SOURCE FINDINGS AND APPROVAL OF EXCEPTION PURSUANT TO PUBLIC CONTRACT CODE SECTION 3400 (c) (2) – SUMITOMO AIR-BLOWN FIBER & RELATED ACCESSORIES

WHEREAS, the Board of Trustees of the MiraCosta Community College District ("District") has been requested to make a finding and approve as an exception pursuant to Public Contract Code Section 3400 (c) (2) one (1) item as further identified hereinbelow for Measure MM projects, and all other projects district-wide, regardless of funding line(s);

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 the potential exception as permitted by the above referenced statute as described in Exhibit A-1 ("Facility Justification Transmittal") submitted to the board with this resolution;

WHEREAS, Steinberg Hart (Architects) has reviewed Exhibit A-1 and has submitted to the board with this resolution their letter/report (Exhibit B-1) 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 proposed item; Exhibit A-1; and Exhibit B-1;

and measured the contents thereof against the requirements of the applicable statute for the suggested exception and has determined that the proposed item meet the requirements on the aforesaid statute as set forth in the legal memorandum submitted with this resolution (Exhibit C-1);

WHEREAS, the proposed item, and corresponding exception, is identified as:

#	Proposed Item and Manufacturer	Exception under PCC section 3400
1.	Sumitomo Air-Blown Fiber & Related Accessories	**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) the proposed item; (ii) the factual findings and recommendations of district staff and the PMO regarding the proposed item identified above as set forth in Exhibit A-1; (iii) the statements and recommendations of Steinberg Hart as set forth in Exhibit B-1; and (iv) the legal memorandum of outside legal counsel (Exhibit C-1), 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; 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, the item identified herein above and its subsequent and/or replacement: model, part number, or system from the specified manufacturer, for use in the district's Measure MM projects, for all projects district-wide, regardless of funding line(s); 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 item for district Measure MM projects, and for all projects district-wide.

ADOPTED, SIGNED AND APPROVED this 21st day of November 2019.

BOARD OF TRUSTEES OF THE
MIRACOSTA COMMUNITY COLLEGE DISTRICT

By:_____
Richard Cassar
Vice 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 **8-19/20** which was duly adopted by the Board of Trustees of the MiraCosta Community College District at a meeting thereof held on the 21st day of November 2019, and that it was so adopted by the following vote:

AYES: 5 _ Cassar, Fischer, Merchat, Pedroza, Simon

NOES: 0 _____

ABSENT: 2 Broad, McNeil

ABSTENTIONS: 0 _____

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