

**RESOLUTION NO. 19-2
OF THE TAMALPAIS UNION HIGH SCHOOL DISTRICT
TO DETERMINE THAT AN EMERGENCY EXISTS REGARDING
CALDWELL THEATER ABATEMENT AND REPAIR WORK
AT TAMALPAIS HIGH SCHOOL**

WHEREAS, Public Contract Code section 20113 provides that a school district may enter into a contract without advertising for or inviting bids when repairs, alterations, work, or improvements are necessary to avoid danger to life or property after a unanimous vote of that district's Board of Trustees declaring that an emergency exists and with the approval of the county superintendent of schools;

WHEREAS, Public Contract Code section 1102 defines an emergency as a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services;

WHEREAS, on or about August 17, 2019, significant flooding was discovered in and around the Caldwell Theater at Tamalpais High School, located at 700 Mill Avenue, Miller Valley, CA ("School"). Due to the water and related damage, abatement and repairs ("Emergency Repairs") are needed to prevent the growth of mold and other microbes, and to allow the space to become habitable and open for operation again.

WHEREAS, if the Emergency Repairs at the School are not completed, a public health, life, and safety hazard will be created, because an increased risk to the public health and safety of the students will exist due to the water damaged materials promoting mold growth;

WHEREAS, the District needs to have a contractor abate, repair, replace or otherwise correct the damage to the Caldwell Theater via the Emergency Repairs at the School to protect against the danger and risks posed by the presence of water intrusion and water damaged materials;

WHEREAS, the District is not able to open the Caldwell Theater to students or the public until the water intrusion and damage is abated and repaired, which impacts school operations;

WHEREAS, the District is subject to the California Uniform Public Construction Cost Accounting Act (Pub. Contract Code §22000, et seq., "CUPCCAA"), which requires that construction contracts of \$60,000 or more be informally bid;

WHEREAS, an exception to Pub. Contract Code §22000 and the CUPCCAA bidding requirements exists in cases of emergency when repair and/or replacements are necessary;

WHEREAS, in cases of emergency, the Board of Trustees of the District ("Board") may proceed pursuant to CUPCCAA to immediately replace or repair any public facility without adopting plans, specifications, strain sheets, or working details, or giving notice for bids to let contracts (Pub. Contract Code § 22035);

WHEREAS, emergency work under section 22035 must be done pursuant to the terms of Public Contract Code section 22050;

WHEREAS, section 22050 requires, in relevant part, that the following steps be taken:

(1) Pursuant to a four-fifths vote of the Board, the District may repair or replace a public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts;

(2) Before taking any action pursuant to paragraph (1), the Board shall make a finding, based on substantial evidence set forth in the minutes of its meeting, that the emergency will not permit a delay resulting from a competitive solicitation for bids, and that the action is necessary to respond to the emergency;

(3) If the Board orders any action specified above, the Board shall review the emergency action at its next regularly scheduled meeting and at every regularly scheduled meeting thereafter until the action is terminated, to determine, by a four-fifths vote, that there is a need to continue the action;

(4) When the Board reviews the emergency action, it shall terminate the action at the earliest possible date that conditions warrant so that the remainder of the emergency action may be completed by giving notice for bids to let contracts;

WHEREAS, immediate action must be taken by the District at the School site including, without limitation, the following Emergency Repairs:

(1) Taking all actions required to make the School site safe and secure to prevent and minimize any possible public health issues;

(2) Procuring and/or performing other associated services and public works required to resume and continue the normal use of the School;

WHEREAS, the Emergency Repairs must be performed without delay to respond to the emergency and to (1) mitigate any damage to the District's property at the School site and (2) to minimize as quickly as possible the potential health and safety impact on District staff, visiting students, teachers, and the general public; and

WHEREAS, because of the requirement that Emergency Repairs be done without delay, District staff must direct firms to perform Emergency Repairs related to the emergency without following formal bidding practices.

NOW, THEREFORE BE IT RESOLVED, DETERMINED, AND FOUND by the Board of Trustees of the Tamalpais Union High School District:

Section 1. That the above recitals are true and correct.

Section 2. That there is an emergency as defined by applicable statute(s);

Section 3. That the Board hereby finds that the Emergency Repairs must commence immediately and therefore will not permit the delays which would result from a competitive bidding process, and that approval of this Resolution is necessary to respond to the emergency;

Section 4. That based on the foregoing, it would be incongruous, futile, and unavailing to attempt to bid this work.

Section 5. That the Board hereby resolves to delegate the authority to execute contracts or change orders, as appropriate and as necessary to the District's Superintendent or designee such that a contractor may be selected to perform all Emergency Repairs, without further advertising for or inviting of bids, and to take all steps and perform all actions necessary to execute and implement those contracts.

Section 6. That District staff report on the status of this emergency to the District's Board at the Board's next regularly scheduled Board meeting and at all subsequent regularly scheduled Board meetings until the Board terminates the emergency action.

Section 7. That the Board hereby resolves to delegate the authority to the Superintendent, or designee, to seek approval of the Superintendent of Schools of Marin County.

Section 8. That, to the extent actions in Section 5 or 7 have been undertaken by the District's Superintendent or designee, the Board hereby ratifies such actions in response to the emergency.

APPROVED, PASSED AND ADOPTED by the Board of Trustees of the Tamalpais Union High School District on this _____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSTENTIONS:

Leslie Harlander
President of the Board of Trustees of the
Tamalpais Union High School District

Attested to:

Cynthia Roenisch
Clerk of the Board of Trustees of the
Tamalpais Union High School District