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|---------------------------------|---|
| Ad Hoc Committee Agenda Item #: | II C- ACTION ITEM   |
| Date:                           | June 13, 2019   |
| To:                             | Magnolia Educational & Research Foundation dba Magnolia Public Schools (“ <b>MPS</b> ”) Ad Hoc Committee (the “ <b>Committee</b> ”) |
| From:                           | Alfredo Rubalcava, CEO & Superintendent   |
| Staff Lead:                     | Patrick Ontiveros, General Counsel & Director of Facilities   |
| RE:                             | Prop 39 Energy Upgrade Contracts  |

## I. Proposed Recommendation(s)

Staff hereby recommends and moves that the Ad Hoc Committee approve the Prop 39 contracts listed below under Article III.

## II. Prop 39 Background

### A. Authorization

At an earlier Board Meeting, the Facilities Committee was designated by the MPS Board as an Ad Hoc Committee to review and approve Prop 39 energy grant contracts.

### B. Prop 39 Energy Upgrades

MPS applied for and received grants for its schools under the Proposition 39 California Clean Energy Jobs Act (“Prop 39”), a state program providing funding to local educational agencies for improving energy efficiency and creating clean energy jobs. Under Prop 39, all MPS schools except for MSA-Santa Ana received funding. According to Prop 39 rules and regulations, Prop 39 projects must be under contract (aka encumbered) by June 30, 2019. Otherwise, such Prop 39 funds which have already been received must be returned to the State of California.

MPS signed an agreement with First Note Finance, inc. (“FNF”) to manage MPS’s Prop 39 projects. FNF performs site walks, issues RFPs and together with MPS Staff selects a contractor for each scope of work.



### III. The Prop 39 Contracts

The proposed Agreements between MPS and the various vendors are substantially similar except for example the scope of work, vendor party to the contract, and contract price. The form of contract has been reviewed by MPS's general counsel and found to be acceptable. The contracts are listed below and attached as exhibits.

**MPS Staff expects to hire someone familiar with labor compliance/prevaling wage requirements for Prop 39 and/or to engage a third party vendor to insure that all labor compliance/prevaling wage requirements are met. MPS shall only issue a notice to proceed once it is satisfied that all contracts are in order.**

#### 1. MSA 3

- HVAC – Contract with Highlands Diversified, Inc. dba Highlands Trade Partners. (\$190,260.59) [See Exhibit A]
- LED Lighting – Contract with ReGreen (\$40,737.94) [See Exhibit B]

#### 2. MSA 4

- HVAC – Contract with Highlands Diversified, Inc. dba Highlands Trade Partners. (\$191,499.52) [See Exhibit C]
- LED Lighting – Contract with Fess Energy, Inc. (\$21,921.62) [See Exhibit D]

#### 3. MSA 5

- LED Lighting – Contract with Fess Energy, Inc. (\$47,582.00) [See Exhibit E]

#### 4. MSA 8

- HVAC - Contract with Mesa Energy Systems, Inc (\$26,040.00) [See Exhibit F]
- LED Lighting – Contract with Vector Energy Group (\$74,812.16) [See Exhibit G]

### IV. Budget Impacts

All costs for the energy efficiency upgrades will be paid with Prop 39 funds previously received by MPS. In the event that LAUSD charges any fees for co-located schools for approving the upgrades, Staff will consult with the school site team and MPS finance to determine whether any such fees can be paid from the school's operating budget or whether the improvements must be downsized so that Prop 39 funds can be used to pay such fees and the project remains cost neutral.

\*\*\* REVIEWED AND APPROVED BY THE CFO\*\*\*

Exhibits (attachments): See Article III. above



Exhibit A

*MSA-3 HVAC – Contract with Highlands Diversified, Inc. dba Highlands Trade Partners.  
(\$190,260.59)*

## **AGREEMENT BETWEEN OWNER AND CONTRACTOR**

**A G R E E M E N T** made as of the 4th day of June, 2019.

**B E T W E E N** the Owner:

Magnolia Educational & Research Foundation dba  
Magnolia Public Schools  
17125 Victory Boulevard  
Van Nuys, CA 91406

and the Contractor:

Highlands Diversified, Inc. dba Highlands Trade  
Partners 5114 E. Clinton Way #111  
Fresno, CA 93727 Tel: (559) 455 – 1700 ext. 102

the Project is:

Magnolia Science Academy 3  
219 E Dimondale Dr.  
Carson, CA 90746

The Owner and Contractor agree as follows.

**ARTICLE 1 THE WORK OF THIS CONTRACT**

This Agreement entered into as of the day and year first written above.

The Contractor shall fully execute the Work described in the Contract Documents, described as follows:

The Work is generally described as the construction work necessary to provide turnkey installation of eight (8) wall mounted packaged heat pump units, three (3) packaged AC units, and eleven (11) programmable thermostats. The heat pumps unit replacements must meet a minimum efficiency 11.0 EER and 14.0 IPLV and the replacement rooftop packaged AC units must be at least SEER-14. They will replace (11) existing units at the site. The project is to be implemented as soon as possible as determined by school client. The project includes development of all documentation required for permit from the local jurisdiction and a full one (1) year replacement labor warranty and warranty to commence upon startup of equipment. The contractor includes a one (1) year warranty period, dated from date of Substantial Completion and must meet requirements of the Los Angeles Unified School District.

A more detailed Scope of Work is provided by attaching a TASK ORDER (Exhibits “A”, “B”, and “C”) to this Contract, and the terms and conditions of the Task Order will take precedence

**ARTICLE 2 RELATIONSHIP OF THE PARTIES**

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Owner and exercise the Contractor’s skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner’s interests. The Owner agrees to furnish and approve, in a timely manner, the information required by the Contractor to perform the Work and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

**ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

**3.1** The date of commencement of the Work shall be per a Notice to Proceed to be issued by the Owner.

**3.2** The Contractor shall have a reasonable period of time to complete this Project, consistent with the timing of the information provided by the Owner concerning the scope of work to be performed.

**ARTICLE 4 BASIS FOR PAYMENT**

**4.1 CONTRACT SUM**

4.1.1 The Owner shall pay the Contractor the Cost of the Work for the scope of work as defined in the Scope and Work Schedule attached hereto as TASK ORDER Exhibit “A” and the Fixed Turnkey Price attached hereto under as TASK ORDER Exhibit “B” Price and Payment Terms.

## ARTICLE 5

### 5.1 PROGRESS PAYMENTS

5.1.1 The Contractor shall, once every month, deliver to the Owner an application for payment (“Application for Payment”) setting forth the amount which the Contractor believes it is entitled to be paid for the current period. Such Application for Payment shall be supported by such data substantiating the Contractor’s right to payment as the Owner may reasonably require including, without limitation, copies of invoices from Subcontractors and material suppliers, receipts and vouchers, a Prevailing Wage Report using the standard California Department of Industrial Relations form, attached hereto as TASK ORDER Exhibit “C”, and a conditional release of lien upon progress payment and a Conditional Release upon Progress Payment. Upon payment, Contractor shall supply Owner with an Unconditional Release of Lien upon Progress Payment.

5.1.2 The Owner will review each Application for Payment, and will pay the amount due within thirty (30) days after Owner’s receipt of the Application for Payment.

5.1.3 The Contractor shall promptly pay each Subcontractor upon receipt of payment out of the amount paid to the Contractor on account of each Subcontractor’s Work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such Subcontractor’s Work.

5.1.4 The Contractor agrees to keep the Work on the site(s) on which Work is to be performed or materials to be furnished pursuant to the Contract Documents free and clear of all mechanic’s liens and claims of liens, provided that the Owner has paid the Contractor the amount due for the labor, services and materials which are the subject of the lien.

### 5.2 FINAL PAYMENT

5.2.1 Upon receipt of written notice from the Contractor that the Work is complete and ready for final inspection, all corrections made, all reports and there is no other unfinished Work, and upon receipt of a final Application for Payment, including all completed and signed Prevailing Wage Reports using the standard California Department of Industrial Relations form, attached hereto as TASK ORDER Exhibit “C”, the Owner will promptly make such inspection and, when it finds the Work acceptable and the Contract fully performed, the Owner will promptly approve final payment.

5.2.2 Final payment, constituting the unpaid balance of the Contract Sum, if any, (subject to any retention with respect to minor work or defective work) shall be due and payable thirty (30) days following the receipt of a final Application for Payment provided that as a condition to such payment the Owner has approved the Work, and Contractor has provided an Unconditional Release of Lien upon final payment for itself and all subcontractors or supplier.

5.2.3 If there should remain minor items to be completed, the Contractor and the Owner shall list such items and the Contractor shall deliver, in writing, its unconditional promise to complete said items within a reasonable time following substantial completion of the work. The Owner may retain an amount equal to one and one-half (1-1/2) times the cost to complete the minor work (“punch-list work”), as reasonably determined by Owner, until such time as the punch-list work is completed.

## **ARTICLE 6 THE CONTRACT DOCUMENTS**

**6.1** The Contract Documents consist of this Agreement Between Owner and Contractor, the bid set of Construction Documents, and the Contractor’s proposal attached as Exhibit “A”. The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Change Order. The Contract Documents shall not be construed to create a contractual relationship between the Owner and a Subcontractor or sub-subcontractor between any persons or entities other than the Owner and Contractor.

**6.2** The term “Work” means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor’s obligations. The Work may constitute the whole or a part of the Project.

## **ARTICLE 7 OWNER**

### **7.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

7.1.1 The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

7.1.2 The Contractor shall pay for the building permit and final inspection. Owner shall pay other permits, governmental fees and charges required for the construction, use or occupancy of permanent structures or permanent changes in existing facilities.

### **7.2 OWNER’S RIGHT TO STOP THE WORK**

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or persistently fails to carry out the Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

### **7.3 OWNER’S RIGHT TO CARRY OUT THE WORK**

If the Contractor defaults or persistently fails or neglects to carry out the Work in accordance with the Contract Documents, or fails to perform a provision of the Contract, the Owner, after ten (10) days written notice to the Contractor and without prejudice to any other remedy the

Owner may have, may make good such deficiencies and may deduct the reasonable cost thereof, from the payment then or thereafter due the Contractor.

## **ARTICLE 8 CONTRACTOR**

**8.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.

**8.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

**8.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

## **8.4 WARRANTY**

**8.4.1** The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear and normal usage.

**8.4.2** Pursuant to the terms of this warranty, the Contractor shall promptly correct Work rejected by the Owner for failing to conform to the requirements of the Contract Documents if discovered within one year after the date of Substantial Completion of the Work, provided that the Owner gives the Contractor prompt written notice of the discovery of the condition. The Contractor shall correct it promptly after receipt of written notice from the Owner to do so.

## **8.5 CLEANING UP**

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus material.

## **ARTICLE 9 CHANGES IN THE WORK**

**9.1** The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be



authorized by written Change Order signed by the Owner and Contractor or by a written Construction Change Directive signed by the Owner.

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **10.1 SAFETY PRECAUTIONS AND PROGRAMS**

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- (1) employees on the Work and other persons who may be affected thereby;
- (2) the Work and materials and equipment to be incorporated therein; and
- (3) other property at the site or adjacent thereto.

The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible, except for damage or loss attributable to acts or omissions of the Owner, and not attributable to the fault or negligence of the Contractor.

### **10.2 PROTECTION OF STUDENTS – WORK DURING SCHOOL HOURS**

#### **10.2.1 Fingerprinting and Criminal Records Check of Contractor’s Employees.**

Contractor shall comply with the provisions of Education Code §45125.1 regarding the submission of fingerprints to the California Department of Justice and the completion of criminal background investigations of the contractor and/or its employees.

Contractor shall not permit any employee to have any contact with school pupils until such time as Contractor has verified in writing to the Owner that such employee has not been convicted of a felony, as defined in Education Code §45125.1.

## **ARTICLE 11 INSURANCE**

### **11.1 CONTRACTOR’S LIABILITY INSURANCE**

11.1.1 The Contractor shall purchase and maintain such insurance as will protect him from claims set forth below which may arise out of or result from the Contractor’s operations under the Contract, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

Worker’s Compensation and Employer’s Liability Insurance with limits of not less than required by law.

Commercial General Liability Insurance, (Insurance Services Office, Form CG 00 01 or equivalent), including

- Personal Injury, including accidental death, with limits of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate;
- Property Damage, including Broad Form Property Damage Coverage, with limits of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate;
- Products Liability/Completed Operations Liability, with limits of not less than One Million Dollars (\$1,000,000) in the aggregate; and
- Automobile Liability - One million dollars (\$1,000,000) for bodily injury and property damage each accident limit.

Before commencing the Work, the Contractor shall furnish a) certificate, satisfactory to Owner, from each insurance company showing that the above insurance is in force, stating policy numbers, dates of expiration, and limit of liability thereunder and b) a certificate naming Owner as an additional insured on a combination of a ISO form CG 20 37 and an ISO CG 20 10 10/01 form or its approved equivalent.

**ARTICLE 12 MISCELLANEOUS PROVISIONS**

**12.1 ASSIGNMENT OF CONTRACT**

Neither party to the Contract shall assign the Contract without written consent of the other.

**12.2 GOVERNING LAW**

The Contract shall be governed by the laws of the State of California.

**12.3 TESTS AND INSPECTIONS**

Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority. The Owner shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures.

**ARTICLE 13 INDEMNIFICATION**

**13.1** To the fullest extent permitted by law, Contractor agrees to indemnify, hold harmless and defend Owner and its Officers, Agents and Employees from and against any and all claims, losses, damages, liability including defects in the work arising out of the negligent acts, errors or omissions and/or breaches of this agreement except to the extent caused by the active or sole negligence, or willful misconduct of the Owner.

**ARTICLE 14 DISPUTES**

**14.1** All disputes not settled by negotiation or mediation shall be resolved by resort to such rights and remedies as the parties each may have at law or in equity. Except to the extent that this AGREEMENT expressly permits a party to suspend performance, pending final resolution of a dispute, the parties shall each proceed diligently and faithfully with performance of their respective obligations under this AGREEMENT. CONTRACTOR acknowledges and agrees that, should a dispute proceed pursuant to this Section, the only issues that the CONTRACTOR may raise in such proceedings are those that were specifically included in its written claim submitted in accordance with this AGREEMENT, as applicable to the type of WORK. Failure to specifically describe an issue in the written claim within 10 days constitutes a waiver of that claim and shall preclude CONTRACTOR from raising such claim in any court or arbitration proceeding.

This Agreement entered into as of the day and year first written above.

Magnolia Educational & Research Foundation  
dba Magnolia Public Schools

Highlands Trade Partners

\_\_\_\_\_  
President & CEO (Signature)

By: Alfredo Rubalcava  
Its: Chief Executive Officer &  
Superintendent

\_\_\_\_\_  
CONTRACTOR (Signature)

By: Leonel Alvarado  
Its: President  
861507  
License Number

**Form of TASK ORDER  
Exhibit A**

**Scope of Work and Schedule**

Facility: Magnolia Science Academy 3

Address: 219 E Dimondale Dr., Carson, CA 90746

**Primary Contact for Site:** Patrick Ontiveros, Tel: (213) 628-3634; Email: [pontiveros@magnoliapublicschools.org](mailto:pontiveros@magnoliapublicschools.org)

Project Manager Name and Contact Info:

James Richmond, First Note Finance *inc*; Cell: (303) 517-8640; Email: [James@FirstNoteFinance.com](mailto:James@FirstNoteFinance.com)

Amanda Kielian, First Note Finance *inc*; Cell: (650) 534-8102; Email: [Amanda@FirstNoteFinance.com](mailto:Amanda@FirstNoteFinance.com)

Scope of Work Narrative:

The Work is generally described as the construction work necessary to provide turnkey installation of eight (8) wall mounted packaged heat pump units, three (3) packaged AC units, and eleven (11) programmable thermostats.

The heat pump unit replacements must meet a minimum efficiency 11.0 EER and 14.0 IPLV and the replacement rooftop packaged AC units must be at least SEER-14. All units include isolation curbs, sound attenuators, CO2 sensors, Bard guards, and IAQ Controllers. The contractor includes a one (1) year warranty period, dated from date of Substantial Completion and meets requirements of the Los Angeles Unified School District.

Additionally, the kWh savings in the CEC approved plan for this scope is 26,911 kWh/year. The energy savings of the project shall be within 15% of 26,911 kWh/year.

|  | <b>(8) 3.5 ton Wall Mounted Heat Pumps</b> | <b>(1) 7.5 ton Rooftop Packaged AC</b> | <b>(2) 5 ton Rooftop Packaged AC</b> |
|--|--|--|--------------------------------------|
| <b>Manufacturer</b>                      | Marvair                                    | Trane                                  | Trane                                |
| <b>Model Number</b>                      | HVPSA42HP2                                 | YHC092F4ELA                            | YHC060F4ELA                          |
| <b>Efficiency (EER and IPLV or SEER)</b> | 11.0 EER and 14.0 IPLV                     | 14.50 SEER                             | 15.0 SEER                            |



Date: June 12, 2018

Magnolia Science Academy 3  
1254 East Helmick Street  
Carson, CA 90746-3164  
Attention: Shandrea Daniel

Warrant: **Magnolia Science Charter Academy 3**  
Project: **Prop 39 HVAC Replacement Project**  
Address: **1254 East Helmick Street, Carson, CA 90746-3164**  
Substantial Completion Date: **xx/xx/20xx**

We, Highlands Diversified, Inc. dba Highlands Trade Partners, do hereby warrant the performed scope of work in accordance with Contract Documents and the work provided to fulfill the requirements of the warranty.

We agree to repair or replace without any expense to the Owner, ordinary wear and tear and unusual abuse or neglect excepted, any or all our work that may prove to be defective in its workmanship, materials, or fail to conform to Contract requirements together with any other work that may be damaged or displaced by so doing within a period of one (1) year from date of Substantial Completion of the above-named Project, unless greater requirements are otherwise stipulated in the Contract Documents.

In the event of our failure to comply with the above-mentioned conditions within thirty (30) days after being notified in writing by the Owner, we collectively or separately do hereby authorize the Owner to proceed to have said defects repaired and made good at our expense and we will honor and pay costs and charges upon demand.

On behalf of Contractor:

On behalf of Owner:

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

*Frank Kaiser*  
General Superintendent

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**Highlands Diversified, Inc.**  
dba Highlands Trade Partners • CSLB License #861507  
5114 East Clinton Way, Ste. 111 • Fresno, CA 93727 • Phone (559) 455-1700 • Fax (559) 455-1711

The funding for this project and scope is dependent upon the availability of State Proposition 39 energy funding. The Prop-39 program requires that State funding be encumbered (that is, committed as evidenced by a signed contract) no later than June 30, 2019. If this Agreement is not executed by both parties by June 30, 2019, this Agreement will be null and void and of no further force or effect. Moreover, this Agreement is subject to the availability of public funding, and if the funding is subsequently determined to be unavailable, CONTRACTOR has no right to be compensated for equipment or supplies purchased, or for WORK performed under this Agreement. Therefore CONTRACTOR shall not purchase any equipment or supplies, or perform any WORK under this Agreement until a written, executed, NOTICE TO PROCEED is provided by Magnolia Science Academy. CONTRACTOR shall have no remedy at law or in equity as a consequence of having violated the foregoing provision. This Agreement will automatically terminate on March 15, 2020, if no NOTICE TO PROCEED is issued by Magnolia Science Academy.

CONTRACTOR will install the following equipment, and ensure that the SEER-14 minimum for rooftop packaged AC systems and 11.0 EER , IPLV 14.0 minimum for heat pumps are met and each system is validated with an ARI certificate.

Project Budget: \$190,260.59

The project budget includes all costs of all contractors, including mechanical, electrical, permits, materials, supplies, demolition... everything.

Product Cut Sheets:

A comprehensive set of project cut sheets will be submitted by CONTRACTOR. Please see link below for a comprehensive set of project cut sheets.

<https://www.dropbox.com/sh/xpnhhjdqtg3ozsr/AAAv5N3DE4vp4BBbT7K6Jx8a?dl=0>

**Exhibit B**

**Price and Payment Terms**

Fixed Turnkey Price: \$190,260.59

(This is the fixed turnkey price to be paid to CONTRACTOR for its completion of the Work, including all products, parts, materials, labor, travel expenses, permits and overhead.)

**Contingencies/Additional Services Budget: \$358.00**

A contingency amount of \$358.00 to cover changes to cover unforeseen circumstances in the project.

**School Budget for LAUSD District Review Process: \$5,000.00**

The amount of \$5,000.00 will be reserved and paid by the school to LAUSD for their project approval review fees.

**Payment Terms:**

- One final invoice per the following Schedule of Values. Payment terms at net 15 days.
- Joint-party checks to ensure payment to equipment suppliers shall be indicated on Final Invoice. All material & equipment suppliers shall be identified, so joint-party checks can be issued.
- Unconditional Waiver and Release upon Final Payment (California Civil Code 8138) is required from all equipment suppliers and/or subcontractors for final payment.
- Unconditional Waiver and Release upon Final Payment (California Civil Code 8138) from the CONTRACTOR is required for final payment.

**Schedule of Values:**

| Project Milestone                             | % Completed | Amount       |
|---|-------------|--------------|
| Installation Complete, Warranty, & O&M Manual | 100%        | \$190,260.59 |

**Exhibit C**

**CA Department of Industrial Relations Prevailing Wage Reporting Form – PWC 100**

This project is funded in whole or in part using Proposition 39 State funding. This statute prohibits sole sourcing of contractors and requires registration with DIR as well as compliance with applicable Prevailing Wage law.

Please use your existing DIR login or register at:

DIR PWC 100 Log-in Site: <https://www.dir.ca.gov/pwc100ext/LoginPage.aspx>





Exhibit B

*MSA-3 LED Lighting – Contract with ReGreen (\$40,737.94)*

## AGREEMENT BETWEEN OWNER AND CONTRACTOR

A G R E E M E N T made as of the 4<sup>th</sup> day of June, 2019.

B E T W E E N the Owner:

Magnolia Educational & Research Foundation dba  
Magnolia Public Schools  
17125 Victory Boulevard  
Van Nuys, CA 91406

and the Contractor:

Regreen Inc.  
120 Standard Street  
El Segundo, CA 90245  
Tel: (310) 920-0747

the Project is:

Magnolia Science Academy 3  
219 E Dimondale Dr.  
Carson, CA 90746

The Owner and Contractor agree as follows.

**ARTICLE 1 THE WORK OF THIS CONTRACT**

This Agreement entered into as of the day and year first written above.

The Contractor shall fully execute the Work described in the Contract Documents, described as follows:

The Work is generally described as the construction work necessary to perform a comprehensive, turnkey, LED Lighting Retrofit for all lighting fixtures, both Interior and Exterior fixtures, including all equipment and materials, installation labor, any sensors and controls necessary for permit or regulatory compliance, permitting, securing rebates, customer acceptance, and warranty.

A more detailed Scope of Work is provided by attaching a TASK ORDER (Exhibits “A”, “B”, and “C”) to this Contract, and the terms and conditions of the Task Order will take precedence.

**ARTICLE 2 RELATIONSHIP OF THE PARTIES**

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Owner and exercise the Contractor’s skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner’s interests. The Owner agrees to furnish and approve, in a timely manner, the information required by the Contractor to perform the Work and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

**ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

**3.1** The date of commencement of the Work shall be per a Notice to Proceed to be issued by the Owner.

**3.2** The Contractor shall have a reasonable period of time to complete this Project, consistent with the timing of the information provided by the Owner concerning the scope of work to be performed.

**ARTICLE 4 BASIS FOR PAYMENT**

**4.1 CONTRACT SUM**

4.1.1 The Owner shall pay the Contractor the Cost of the Work for the scope of work as defined in the Scope and Work Schedule attached hereto as TASK ORDER Exhibit “A” and the Fixed Turnkey Price attached hereto under as TASK ORDER Exhibit “B” Price and Payment Terms.

**ARTICLE 5**

**5.1 PROGRESS PAYMENTS**

5.1.1 The Contractor shall, once every month, deliver to the Owner an application for payment (“Application for Payment”) setting forth the amount which the Contractor believes it is entitled to be paid for the current period. Such Application for Payment shall be supported by such data substantiating the Contractor’s right to payment as the Owner may reasonably require including, without limitation, copies of invoices from Subcontractors and material suppliers, receipts and vouchers, a Prevailing Wage Report using the standard California Department of Industrial Relations form, attached hereto as TASK ORDER Exhibit “C”, and a conditional release of lien upon progress payment and a Conditional Release upon Progress Payment. Upon payment, Contractor shall supply Owner with an Unconditional Release of Lien upon Progress Payment.

5.1.2 The Owner will review each Application for Payment, and will pay the amount due within thirty (30) days after Owner’s receipt of the Application for Payment.

5.1.3 The Contractor shall promptly pay each Subcontractor upon receipt of payment out of the amount paid to the Contractor on account of each Subcontractor’s Work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such Subcontractor’s Work.

5.1.4 The Contractor agrees to keep the Work on the site(s) on which Work is to be performed or materials to be furnished pursuant to the Contract Documents free and clear of all mechanic’s liens and claims of liens, provided that the Owner has paid the Contractor the amount due for the labor, services and materials which are the subject of the lien.

## 5.2 FINAL PAYMENT

5.2.1 Upon receipt of written notice from the Contractor that the Work is complete and ready for final inspection, all corrections made, all reports and there is no other unfinished Work, and upon receipt of a final Application for Payment, including all completed and signed Prevailing Wage Reports using the standard California Department of Industrial Relations form, attached hereto as TASK ORDER Exhibit “C”, the Owner will promptly make such inspection and, when it finds the Work acceptable and the Contract fully performed, the Owner will promptly approve final payment.

5.2.2 Final payment, constituting the unpaid balance of the Contract Sum, if any, (subject to any retention with respect to minor work or defective work) shall be due and payable fifteen (15) days following the receipt of a final Application for Payment provided that as a condition to such payment the Owner has approved the Work, and Contractor has provided an Unconditional Release of Lien upon final payment for itself and all subcontractors or supplier.

5.2.3 If there should remain minor items to be completed, the Contractor and the Owner shall list such items and the Contractor shall deliver, in writing, its unconditional promise to complete said items within a reasonable time following substantial completion of the work. The Owner may retain an amount equal to one and one-half (1-1/2) times the cost to complete the minor work (“punch-list work”), as reasonably determined by Owner, until such time as the punch-list work is completed.

## **ARTICLE 6 THE CONTRACT DOCUMENTS**

**6.1** The Contract Documents consist of this Agreement Between Owner and Contractor, the bid set of Construction Documents, and the Contractor's proposal attached as Exhibit "A". The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Change Order. The Contract Documents shall not be construed to create a contractual relationship between the Owner and a Subcontractor or sub-subcontractor between any persons or entities other than the Owner and Contractor.

**6.2** The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

## **ARTICLE 7 OWNER**

### **7.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

**7.1.1** The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

**7.1.2** The Owner shall pay for the building permit, other permits, governmental fees and charges required for the construction, use or occupancy of permanent structures or permanent changes in existing facilities.

### **7.2 OWNER'S RIGHT TO STOP THE WORK**

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or persistently fails to carry out the Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

### **7.3 OWNER'S RIGHT TO CARRY OUT THE WORK**

If the Contractor defaults or persistently fails or neglects to carry out the Work in accordance with the Contract Documents, or fails to perform a provision of the Contract, the Owner, after ten (10) days written notice to the Contractor and without prejudice to any other remedy the Owner may have, may make good such deficiencies and may deduct the reasonable cost thereof, from the payment then or thereafter due the Contractor.

## **ARTICLE 8 CONTRACTOR**

**8.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction

means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.

**8.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor’s employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

**8.3** The Contractor shall enforce strict discipline and good order among the Contractor’s employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

**8.4 WARRANTY**

8.4.1 The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. The Contractor’s warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear and normal usage.

8.4.2 Pursuant to the terms of this warranty, the Contractor shall promptly correct Work rejected by the Owner for failing to conform to the requirements of the Contract Documents if discovered within one year after the date of Substantial Completion of the Work, provided that the Owner gives the Contractor prompt written notice of the discovery of the condition. The Contractor shall correct it promptly after receipt of written notice from the Owner to do so.

**8.5 CLEANING UP**

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor’s tools, construction equipment, machinery and surplus material.

**ARTICLE 9 CHANGES IN THE WORK**

**9.1** The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner and Contractor or by a written Construction Change Directive signed by the Owner.

**ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

**10.1 SAFETY PRECAUTIONS AND PROGRAMS**

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- (1) employees on the Work and other persons who may be affected thereby;
- (2) the Work and materials and equipment to be incorporated therein; and
- (3) other property at the site or adjacent thereto.

The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible, except for damage or loss attributable to acts or omissions of the Owner, and not attributable to the fault or negligence of the Contractor.

**10.2 PROTECTION OF STUDENTS – WORK DURING SCHOOL HOURS**

10.2.1 Fingerprinting and Criminal Records Check of Contractor’s Employees.

Contractor shall comply with the provisions of Education Code §45125.1 regarding the submission of fingerprints to the California Department of Justice and the completion of criminal background investigations of the contractor and/or its employees.

Contractor shall not permit any employee to have any contact with school pupils until such time as Contractor has verified in writing to the Owner that such employee has not been convicted of a felony, as defined in Education Code §45125.1.

**ARTICLE 11 INSURANCE**

**11.1 CONTRACTOR’S LIABILITY INSURANCE**

11.1.1 The Contractor shall purchase and maintain such insurance as will protect him from claims set forth below which may arise out of or result from the Contractors operations under the Contract, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for shows acts any of them may be liable:

Workers Compensation and Employers Liability Insurance with limits of not less than required by law.

Commercial General Liability Insurance, (Insurance Services Office, Form CG 00 01 or equivalent), including

- Personal Injury, including accidental death, with limits of not less than One Million Dollar (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate;
- Property Damage, including Broad Form Property Damage Coverage, with limits of not less than One Million Dollars (\$1,000,00) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate;
- Products Liability/Completed Operations Liability, with limits of not less than One Million Dollars (\$1,000,000) in the aggregate; and
- Automobile Liability – One Million dollars (\$1,000,000) for bodily injury and property damage each accident limit.

Before commencing the Work, the Contractor shall furnish a) a certificate, satisfactory to Owner, from each insurance company showing that the above insurance is in force, stating policy numbers, dates of expiration, and limit of liability thereunder and b) a certificate naming Owner as an additional insured on a combination of a ISO form CG 20 37 and an ISO CG 20 10 10/01 form or its approved equivalent.

**ARTICLE 12 MISCELLANEOUS PROVISIONS**

**12.1 ASSIGNMENT OF CONTRACT**

Neither party to the Contract shall assign the Contract without written consent of the other.

**12.2 GOVERNING LAW**

The Contract shall be governed by the laws of the State of California.

**12.3 TESTS AND INSPECTIONS**

Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority. The Owner shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures.

**ARTICLE 13 INDEMNIFICATION**

**13.1** To the fullest extent permitted by law, Contractor agrees to indemnify, hold harmless and defend Owner and its Officers, Agents and Employees from and against any and all claims, losses, damages, liability including defects in the work arising out of the negligent acts, errors or omissions and/or breaches of this agreement except to the extent caused by the active or sole negligence, or willful misconduct of the Owner.



**ARTICLE 14        DISPUTES**

**14.1** All disputes not settled by negotiation or mediation shall be resolved by resort to such rights and remedies as the parties each may have at law or in equity. Except to the extent that this AGREEMENT expressly permits a party to suspend performance, pending final resolution of a dispute, the parties shall each proceed diligently and faithfully with performance of their respective obligations under this AGREEMENT. CONTRACTOR acknowledges and agrees that, should a dispute proceed pursuant to this Section, the only issues that the CONTRACTOR may raise in such proceedings are those that were specifically included in its written claim submitted in accordance with this AGREEMENT, as applicable to the type of WORK. Failure to specifically describe an issue in the written claim within 10 days constitutes a waiver of that claim and shall preclude CONTRACTOR from raising such claim in any court or arbitration proceeding.

This Agreement entered into as of the day and year first written above.

Magnolia Educational & Research  
Foundation dba Magnolia Public Schools

Regreen

\_\_\_\_\_  
President & CEO (Signature)

\_\_\_\_\_  
CONTRACTOR (Signature)

By: Alfredo Rubalcava  
Its: Chief Executive Officer &  
Superintendent

By: Chad Clark  
Its: President  
License Number: 939440

**TASK ORDER**  
**Exhibit A**

**Scope of Work and Schedule**

Facility: Magnolia Science Academy 3

Address: 219 E Dimondale Dr., Carson, CA 90746

**Primary Contact for Site:** Patrick Ontiveros, Tel: (213) 628-3634; Email: [pontiveros@magnoliapublicschools.org](mailto:pontiveros@magnoliapublicschools.org)

**Project Manager Name and Contact Info:**

James Richmond, First Note Finance *inc*; Cell: (303) 517-8640; Email: [James@FirstNoteFinance.com](mailto:James@FirstNoteFinance.com)

Amanda Kielian, First Note Finance *inc*; Cell: (650) 534-8102; Email: [Amanda@FirstNoteFinance.com](mailto:Amanda@FirstNoteFinance.com)

**Project Manager Name and Contact Info for CONTRACTOR:**

Carly Moss, Tel: (469) 422-0676; Email: [carly@regreencorp.com](mailto:carly@regreencorp.com)

Karina Branum, Tel: (213)378-1761; Email: [karina@regreencorp.com](mailto:karina@regreencorp.com)

**Scope of Work Narrative:**

CONTRACTOR shall perform a comprehensive, turnkey, LED Lighting Retrofit for all lighting fixtures, both Interior and Exterior, including all equipment and materials, installation labor, 40 sensors and controls necessary for permit or regulatory compliance, permitting, securing rebates, customer acceptance, and warranty. CONTRACTOR shall perform its own site survey and provide Owner with a scope and price proposal prior to executing this contract. The site survey shall be of sufficient detail to capture in advance any potential change orders, including but not limited to emergency lighting, battery backups, product compatibility with compact fluorescent ballasts, occupancy sensor integration, and/or product voltage compatibility. The annual kWh energy savings of the CONTRACTOR proposed systems shall be within 15% of the calculated energy savings of 58,671 kWh in order to adhere to the CA Proposition 39 funding guidelines. For fluorescent tube fixture retrofits, the Owner's preference is a line-voltage LED replacement where the fluorescent ballasts are removed. CONTRACTOR shall prepare and submit rebate applications and assist Owner with collection of the rebates, even after the on-site work is complete and accepted.

All lighting materials and equipment shall follow the specifications required by LAUSD.

The funding for this project and scope is dependent upon the availability of State Proposition 39 energy funding. The Prop-39 program requires that State funding be encumbered (that is, committed as evidenced by a signed contract) no later than June 30, 2019. If this Agreement is not executed by both parties by June 30, 2019, this Agreement will be null and void and of no further force or effect. Moreover, this Agreement is subject to the availability of public funding, and if the funding is subsequently determined to be unavailable, CONTRACTOR has no right to be compensated for equipment or supplies purchased, or for WORK performed under this Agreement. Therefore CONTRACTOR shall not purchase any equipment or supplies, or perform any WORK under this Agreement until a written, executed, NOTICE TO PROCEED is provided by Magnolia Science Academy. CONTRACTOR shall have no remedy at law or in equity as a consequence of having violated the foregoing provision. This Agreement will automatically terminate on March 15, 2020, if no NOTICE TO PROCEED is issued by Magnolia Science Academy.

**Bill of Materials:**

| <b>Part Number</b>              | <b>Qty</b> |
|---------------------------------|------------|
| ESPEN L48T8/840/14G-ID          | 372        |
| GREEN CREATIVE 9.5PLH/840/BYP   | 9          |
| LUNERA SN-360-E39-L-8KLM-840-G3 | 34         |
| TCP L11A19D2541K                | 4          |

**Project Budget:** \$40,737.94

(The PROJECT MANAGER will provide a dollar amount which is the maximum project budget here. This is the maximum amount of project funding secured through the Proposition 39 application.)

**Contingencies /Additional Services Budget: \$358.00**

A contingency amount of \$358.00 to cover changes to cover unforeseen circumstances in the project.

**School Budget for LAUSD District Review Process: \$5,000.00**

The amount of \$5,000.00 will be reserved and paid by the school to LAUSD for their project approval review fees.

**Tabular Listing of the Work to be Performed:**

|  |                    |
|--|--------------------|
| Interior: Fluorescent Tube Fixture Retrofit: | \$15,890.94        |
| Interior: LED Bulbs:                         | \$ 9,968.49        |
| Exterior: LED Retrofit:                      | \$ 1,573.16        |
| Interior: Lighting Occupancy Controls:       | <u>\$13,305.33</u> |
| <b>Total LED Retrofit:</b>                   | <b>\$40,737.94</b> |

**Schedule:** The LED lighting project is requested to be undertaken during after regular school hours or during the upcoming Summer Break 2019 as determined by school client.

**Product Cut Sheets:**

A comprehensive set of project cut sheets will be submitted by CONTRACTOR and included here by reference attachment.

The link name is: <https://www.dropbox.com/s/m4dkevtq35eo84b/MSA%203%20-%20Attachment%20A%20-%20Product%20Information.pdf?dl=0>

**Exhibit B**

**Price and Payment Terms**

**Fixed Turnkey Price:** \$40,737.94

(This is the fixed turnkey price to be paid to CONTRACTOR for its completion of the Work, including all products, parts, materials, labor, travel expenses, permits and overhead. CONTRACTOR’s price shall be in conformance with its bid that it submitted with the RFQ.)

**Payment Terms:**

- One final invoice per the following Schedule of Values. Payment terms at net 15 days.
- Joint-party checks to ensure payment to equipment suppliers shall be indicated on Final Invoice. All material & equipment suppliers shall be identified, so joint-party checks can be issued.
- Unconditional Waiver and Release upon Final Payment (California Civil Code 8138) is required from all equipment suppliers and/or subcontractors for final payment.
- Unconditional Waiver and Release upon Final Payment (California Civil Code 8138) from the CONTRACTOR is required for final payment.

**Schedule of Values:**

| Project Milestone                             | % Completed | Amount      |
|---|-------------|-------------|
| Installation Complete, Warranty, & O&M Manual | 100%        | \$40,737.94 |

**Bid Form & Schedule of Values for OPTION A – LINE VOLTAGE LED LAMP RETROFIT APPROACH**  
 Date: 7/12/2018 Company: ReGreen, Inc. Email: chad@regreencorp.com  
 Name: Chad Clark Telephone: 310.920.0747

**Magnolia Science Academy 3**

|                                   |  | PRICE OF                                       |                            |                                |                       | Schedule of Values (5) | Estimated Rebates (6) | Payer(s) of Rebates (7) |
|-----------------------------------|--|--|----------------------------|--------------------------------|-----------------------|------------------------|-----------------------|-------------------------|
|                                   |  | Interior Fluorescent Tube Fixture Retrofit (1) | Interior Bulb Retrofit (2) | Exterior Lighting Retrofit (3) | Occupancy Sensors (4) |                        |                       |                         |
| <b>Option A</b>                   | <b>Line Voltage Lamp Retrofit Approach</b>                             |  |                            |                                |                       |                        |                       |                         |
| 1                                 | Magnolia Science Academy 3 Lighting Products                           | \$ 9,080.54                                    | \$ 5,696.28                | \$ 898.95                      | \$ 7,983.20           | 60%                    | \$ -                  | SCE*                    |
| 2                                 | Magnolia Science Academy 3 Installation Labor, Lamp & Ballast Disposal | \$ 6,053.69                                    | \$ 3,797.52                | \$ 599.30                      | \$ 4,789.92           | 36%                    |                       |                         |
| 3                                 | Magnolia Science Academy 3 Cost of Permits and Inspections             | \$ 756.71                                      | \$ 474.69                  | \$ 74.91                       | \$ 532.21             | 4%                     |                       |                         |
| <b>TOTAL TURNKEY FIXED PRICE:</b> |  |  |                            |                                |                       | <b>100%</b>            |                       |                         |

Total: \$ 40,737.94  
 \*No rebate available on Line Voltage Lamp Retrofit with SCE

Please list the DLC product numbers for the lighting products included in the Option A – Line Voltage LED Lamp Retrofit Approach table above

| DLC Number | Product Description and Lamp or Fixture Lumens | Includes Integrated Area Controls or Occupancy Sensing? (Yes / No) | Includes Integrated Dimming Controls? (Yes / No) | Product Cut Sheet Provided with Bid? (Yes / No) |   |
|------------|--|--|--|---|---|
| PCG3GEYZ   | 4ft LED T8, 14W, 4000K, 1800 lm                | No**   | No**   | Yes   | **See attached proposal for control details |
| PD8TCCSH   | LED HID Replacement, 53.55W, 4000K, 5070.58 lm | No**   | No**   | Yes   |   |
|            |  |  |  |   |   |
|            |  |  |  |   |   |

I, (name) Chad Clark, am qualified to make this bid-offer commitment on behalf of my company. The fixed, turnkey price provided is all-inclusive. I understand that this bid is provided to the client without expectation for compensation of any kind for the cost of preparing it, and that the Client (Magnolia Science Academy 3), or its designated Energy Manager (First Note Finance inc) may reject this bid if it is not responsive, complete or submitted after Thursday, July 12 2018, 4:00 PM.

**Exhibit C**

**CA Department of Industrial Relations Prevailing Wage Reporting Form – PWC 100**

This project is funded in whole or in part using Proposition 39 State funding. This statute prohibits sole sourcing of contractors and requires registration with DIR as well as compliance with applicable Prevailing Wage law.

Please use your existing DIR login or register at:

DIR PWC 100 Log-in Site: <https://www.dir.ca.gov/pwc100ext/LoginPage.aspx>



Exhibit C

*MSA-4 HVAC – Contract with Highlands Diversified, Inc. dba Highlands Trade Partners.  
(\$191,499.52)*



## **AGREEMENT BETWEEN OWNER AND CONTRACTOR**

**A G R E E M E N T** made as of the 5th day of June, 2019.

**B E T W E E N** the Owner: Magnolia Educational & Research Foundation dba  
Magnolia Public Schools  
17125 Victory Boulevard  
Van Nuys, CA 91406

and the Contractor: Highlands Diversified, Inc. dba Highlands Trade  
Partners 5114 E. Clinton Way #111  
Fresno, CA 93727 Tel: (559) 455 – 1700 ext. 102

the Project is: Magnolia Science Academy 4  
11330 Graham Place  
Los Angeles, CA 90064

The Owner and Contractor agree as follows.

## **ARTICLE 1 THE WORK OF THIS CONTRACT**

This Agreement entered into as of the day and year first written above.

The Contractor shall fully execute the Work described in the Contract Documents, described as follows:

The Work is generally described as the construction work necessary to provide turnkey installation of nine (9) Wall Mounted Heat Pump Systems and nine (9) programmable, networking, smart thermostats. These replacement units shall be 11.0 EER and 14.0 IPLV or better, and will replace (9) existing Wall Mounted Heat Pump units located on the portable classrooms. All units include isolation curbs, sound attenuators, CO2 sensors, Bard guards, and IAQ Controllers.

The project is to be implemented as soon as possible as determined by school client. The project includes development of all documentation required for permit from the local jurisdiction and a full one (1) year replacement labor warranty and warranty to commence upon startup of equipment. The contractor includes a one (1) year warranty period, dated from date of Substantial Completion and must meet requirements of the Los Angeles Unified School District.

A more detailed Scope of Work is provided by attaching a TASK ORDER (Exhibits “A”, “B”, and “C”) to this Contract, and the terms and conditions of the Task Order will take precedence

## **ARTICLE 2 RELATIONSHIP OF THE PARTIES**

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Owner and exercise the Contractor’s skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner’s interests. The Owner agrees to furnish and approve, in a timely manner, the information required by the Contractor to perform the Work and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

## **ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

**3.1** The date of commencement of the Work shall be per a Notice to Proceed to be issued by the Owner.

**3.2** The Contractor shall have a reasonable period of time to complete this Project, consistent with the timing of the information provided by the Owner concerning the scope of work to be performed.

## **ARTICLE 4 BASIS FOR PAYMENT**

### **4.1 CONTRACT SUM**

4.1.1 The Owner shall pay the Contractor the Cost of the Work for the scope of work as defined in the Scope and Work Schedule attached hereto as TASK ORDER Exhibit “A” and the Fixed Turnkey Price attached hereto under as TASK ORDER Exhibit “B” Price and Payment Terms.

## **ARTICLE 5**

### **5.1 PROGRESS PAYMENTS**

5.1.1 The Contractor shall, once every month, deliver to the Owner an application for payment (“Application for Payment”) setting forth the amount which the Contractor believes it is entitled to be paid for the current period. Such Application for Payment shall be supported by such data substantiating the Contractor’s right to payment as the Owner may reasonably require including, without limitation, copies of invoices from Subcontractors and material suppliers, receipts and vouchers, a Prevailing Wage Report using the standard California Department of Industrial Relations form, attached hereto as TASK ORDER Exhibit “C”, and a conditional release of lien upon progress payment and a Conditional Release upon Progress Payment. Upon payment, Contractor shall supply Owner with an Unconditional Release of Lien upon Progress Payment.

5.1.2 The Owner will review each Application for Payment, and will pay the amount due within thirty (30) days after Owner’s receipt of the Application for Payment.

5.1.3 The Contractor shall promptly pay each Subcontractor upon receipt of payment out of the amount paid to the Contractor on account of each Subcontractor’s Work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such Subcontractor’s Work.

5.1.4 The Contractor agrees to keep the Work on the site(s) on which Work is to be performed or materials to be furnished pursuant to the Contract Documents free and clear of all mechanic’s liens and claims of liens, provided that the Owner has paid the Contractor the amount due for the labor, services and materials which are the subject of the lien.

### **5.2 FINAL PAYMENT**

5.2.1 Upon receipt of written notice from the Contractor that the Work is complete and ready for final inspection, all corrections made, all reports and there is no other unfinished Work, and upon receipt of a final Application for Payment, including all completed and signed Prevailing Wage Reports using the standard California Department of Industrial Relations form, attached hereto as TASK ORDER Exhibit “C”, the Owner will promptly make such inspection and, when it finds the Work acceptable and the Contract fully performed, the Owner will promptly approve final payment.

5.2.2 Final payment, constituting the unpaid balance of the Contract Sum, if any, (subject to any retention with respect to minor work or defective work) shall be due and payable thirty (30) days following the receipt of a final Application for Payment provided that as a condition to such payment the Owner has approved the Work, and Contractor has provided an Unconditional Release of Lien upon final payment for itself and all subcontractors or supplier.

5.2.3 If there should remain minor items to be completed, the Contractor and the Owner shall list such items and the Contractor shall deliver, in writing, its unconditional promise to complete said items within a reasonable time following substantial completion of the work. The Owner may retain an amount equal to one and one-half (1-1/2) times the cost to complete the minor work (“punch-list work”), as reasonably determined by Owner, until such time as the punch-list work is completed.

## **ARTICLE 6 THE CONTRACT DOCUMENTS**

**6.1** The Contract Documents consist of this Agreement Between Owner and Contractor, the bid set of Construction Documents, and the Contractor’s proposal attached as Exhibit “A”. The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Change Order. The Contract Documents shall not be construed to create a contractual relationship between the Owner and a Subcontractor or sub-subcontractor between any persons or entities other than the Owner and Contractor.

**6.2** The term “Work” means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor’s obligations. The Work may constitute the whole or a part of the Project.

## **ARTICLE 7 OWNER**

### **7.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

7.1.1 The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

7.1.2 The Contractor shall pay for the building permit and final inspection. Owner shall pay other permits, governmental fees and charges required for the construction, use or occupancy of permanent structures or permanent changes in existing facilities.

### **7.2 OWNER’S RIGHT TO STOP THE WORK**

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or persistently fails to carry out the Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

### **7.3 OWNER’S RIGHT TO CARRY OUT THE WORK**

If the Contractor defaults or persistently fails or neglects to carry out the Work in accordance with the Contract Documents, or fails to perform a provision of the Contract, the Owner, after ten (10) days written notice to the Contractor and without prejudice to any other remedy the

Owner may have, may make good such deficiencies and may deduct the reasonable cost thereof, from the payment then or thereafter due the Contractor.

## **ARTICLE 8 CONTRACTOR**

**8.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.

**8.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

**8.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

## **8.4 WARRANTY**

**8.4.1** The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear and normal usage.

**8.4.2** Pursuant to the terms of this warranty, the Contractor shall promptly correct Work rejected by the Owner for failing to conform to the requirements of the Contract Documents if discovered within one year after the date of Substantial Completion of the Work, provided that the Owner gives the Contractor prompt written notice of the discovery of the condition. The Contractor shall correct it promptly after receipt of written notice from the Owner to do so.

## **8.5 CLEANING UP**

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus material.

## **ARTICLE 9 CHANGES IN THE WORK**

**9.1** The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be

authorized by written Change Order signed by the Owner and Contractor or by a written Construction Change Directive signed by the Owner.

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **10.1 SAFETY PRECAUTIONS AND PROGRAMS**

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- (1) employees on the Work and other persons who may be affected thereby;
- (2) the Work and materials and equipment to be incorporated therein; and
- (3) other property at the site or adjacent thereto.

The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible, except for damage or loss attributable to acts or omissions of the Owner, and not attributable to the fault or negligence of the Contractor.

### **10.2 PROTECTION OF STUDENTS – WORK DURING SCHOOL HOURS**

#### **10.2.1 Fingerprinting and Criminal Records Check of Contractor’s Employees.**

Contractor shall comply with the provisions of Education Code §45125.1 regarding the submission of fingerprints to the California Department of Justice and the completion of criminal background investigations of the contractor and/or its employees.

Contractor shall not permit any employee to have any contact with school pupils until such time as Contractor has verified in writing to the Owner that such employee has not been convicted of a felony, as defined in Education Code §45125.1.

## **ARTICLE 11 INSURANCE**

### **11.1 CONTRACTOR’S LIABILITY INSURANCE**

11.1.1 The Contractor shall purchase and maintain such insurance as will protect him from claims set forth below which may arise out of or result from the Contractor’s operations under the Contract, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

Worker’s Compensation and Employer’s Liability Insurance with limits of not less than required by law.

Commercial General Liability Insurance, (Insurance Services Office, Form CG 00 01 or equivalent), including

- Personal Injury, including accidental death, with limits of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate;
- Property Damage, including Broad Form Property Damage Coverage, with limits of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate;
- Products Liability/Completed Operations Liability, with limits of not less than One Million Dollars (\$1,000,000) in the aggregate; and
- Automobile Liability - One million dollars (\$1,000,000) for bodily injury and property damage each accident limit.

Before commencing the Work, the Contractor shall furnish a) certificate, satisfactory to Owner, from each insurance company showing that the above insurance is in force, stating policy numbers, dates of expiration, and limit of liability thereunder and b) a certificate naming Owner as an additional insured on a combination of a ISO form CG 20 37 and an ISO CG 20 10 10/01 form or its approved equivalent.

## **ARTICLE 12 MISCELLANEOUS PROVISIONS**

### **12.1 ASSIGNMENT OF CONTRACT**

Neither party to the Contract shall assign the Contract without written consent of the other.

### **12.2 GOVERNING LAW**

The Contract shall be governed by the laws of the State of California.

**12.3 TESTS AND INSPECTIONS**

Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority. The Owner shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures.

**ARTICLE 13 INDEMNIFICATION**

**13.1** To the fullest extent permitted by law, Contractor agrees to indemnify, hold harmless and defend Owner and its Officers, Agents and Employees from and against any and all claims, losses, damages, liability including defects in the work arising out of the negligent acts, errors or omissions and/or breaches of this agreement except to the extent caused by the active or sole negligence, or willful misconduct of the Owner.

**ARTICLE 14 DISPUTES**

**14.1** All disputes not settled by negotiation or mediation shall be resolved by resort to such rights and remedies as the parties each may have at law or in equity. Except to the extent that this AGREEMENT expressly permits a party to suspend performance, pending final resolution of a dispute, the parties shall each proceed diligently and faithfully with performance of their respective obligations under this AGREEMENT. CONTRACTOR acknowledges and agrees that, should a dispute proceed pursuant to this Section, the only issues that the CONTRACTOR may raise in such proceedings are those that were specifically included in its written claim submitted in accordance with this AGREEMENT, as applicable to the type of WORK. Failure to specifically describe an issue in the written claim within 10 days constitutes a waiver of that claim and shall preclude CONTRACTOR from raising such claim in any court or arbitration proceeding.

This Agreement entered into as of the day and year first written above.

Magnolia Educational & Research  
Foundation dba Magnolia Public Schools

Highlands Trade Partners

\_\_\_\_\_  
President & CEO (Signature)

\_\_\_\_\_  
CONTRACTOR (Signature)

By: Alfredo Rubalcava  
Its: Chief Executive Officer &  
Superintendent

By: Leonel Alvarado  
Its: President  
861507  
License Number



**Form of TASK ORDER  
Exhibit A**

**Scope of Work and Schedule**

Facility: Magnolia Science Academy 4

Address: 11330 Graham Place, Los Angeles, CA 90064

**Primary Contact for Site:** Patrick Ontiveros, Tel: (213) 628-3634; Email:  
[pontiveros@magnoliapublicschools.org](mailto:pontiveros@magnoliapublicschools.org)

**Project Manager Name and Contact Info:**

James Richmond, First Note Finance *inc*; Cell: (303) 517-8640; Email:  
[James@FirstNoteFinance.com](mailto:James@FirstNoteFinance.com)

Amanda Kielian, First Note Finance *inc*; Cell: (650) 534-8102; Email:  
[Amanda@FirstNoteFinance.com](mailto:Amanda@FirstNoteFinance.com)

**Project Manager Name and Contact Info for CONTRACTOR:**

Frank Kaiser, Highlands Trade Partners, Cell: (559) 978-3876; Email:  
[fkaiser@highlandstraes.com](mailto:fkaiser@highlandstraes.com)

Scope of Work Narrative:

This project includes the turnkey (Design-Build) Engineering, Design, Electrical, permitting, Installation, and Commissioning Support of nine (9) Bard Wall Mounted Heat Pumps and nine (9) Bard programmable, networking, smart thermostats.

The unit replacements must meet a minimum efficiency 11.0 EER and 14.0 IPLV. All units include isolation curbs, sound attenuators, CO2 sensors, Bard guards, and IAQ Controllers. The contractor includes a one (1) year warranty period, dated from date of Substantial Completion and meets requirements of the Los Angeles Unified School District.

Additionally, the kWh savings in the CEC approved plan for this scope is 24,527 kWh/year. The energy savings of the project shall be within 15% of 24,527 kWh/year.

| <b>(9) 3.5 ton Wall Mounted Heat Pumps</b> |                        |
|--|------------------------|
| <b>Manufacturer</b>                        | Bard                   |
| <b>Model Number</b>                        | C42H1-A0ZVP4XXX        |
| <b>Efficiency (EER and IPLV)</b>           | 11.0 EER and 14.7 IPLV |

The funding for this project and scope is dependent upon the availability of State Proposition 39 energy funding. The Prop-39 program requires that State funding be encumbered (that is, committed as evidenced by a signed contract) no later than June 30, 2019. If this Agreement is not executed by both parties by June 30, 2019, this Agreement will be null and void and of no further force or effect. Moreover, this Agreement is subject to the availability of public funding, and if the funding is subsequently determined to be unavailable, CONTRACTOR has no right to be compensated for equipment or supplies purchased, or for WORK performed under this Agreement. Therefore CONTRACTOR shall not purchase any equipment or supplies, or perform any WORK under this Agreement until a written, executed, NOTICE TO PROCEED is provided by Magnolia Science Academy. CONTRACTOR shall have no remedy at law or in equity as a consequence of having violated the foregoing provision. This Agreement will automatically terminate on March 15, 2020, if no NOTICE TO PROCEED is issued by Magnolia Science Academy.

CONTRACTOR will install the following equipment, and ensure that 11.0 EER and 14.7 IPLV specification for each system is validated with an ARI certificate.

Project Budget: \$ 191,499.52

The project budget includes all costs of all contractors, including mechanical, electrical, permits, materials, supplies, demolition... everything.

Product Cut Sheets:

A comprehensive set of project cut sheets will be submitted by CONTRACTOR. Please see link below for a comprehensive set of project cut sheets.

[https://www.dropbox.com/s/0tu5oq2pt3crr80/Build-A-Bard%20LAUSD-%20MSA\\_4%20Submittal.pdf?dl=0](https://www.dropbox.com/s/0tu5oq2pt3crr80/Build-A-Bard%20LAUSD-%20MSA_4%20Submittal.pdf?dl=0)

**Exhibit B**

**Price and Payment Terms**

Fixed Turnkey Price: \$191,499.52

(This is the fixed turnkey price to be paid to CONTRACTOR for its completion of the Work, including all products, parts, materials, labor, travel expenses, permits and overhead.)

**Contingencies/Additional Services Budget: \$3,207.00**

A contingency amount of \$3,207.00 to cover changes to cover unforeseen circumstances in the project.

**School Budget for LAUSD District Review Process: \$5,000.00**

The amount of \$5,000.00 will be paid by the school to LAUSD for their project approval review fees.

**Payment Terms:**

- One final invoice per the following Schedule of Values. Payment terms at net 15 days.
- Joint-party checks to ensure payment to equipment suppliers shall be indicated on Final Invoice. All material & equipment suppliers shall be identified, so joint-party checks can be issued.
- Unconditional Waiver and Release upon Final Payment (California Civil Code 8138) is required from all equipment suppliers and/or subcontractors for final payment.
- Unconditional Waiver and Release upon Final Payment (California Civil Code 8138) from the CONTRACTOR is required for final payment.

**Schedule of Values:**

| <b>Project Milestone</b>                      | <b>% Completed</b> | <b>Amount</b> |
|---|--------------------|---------------|
| Installation Complete, Warranty, & O&M Manual | 100%               | \$191,499.52  |

**Exhibit C**

**CA Department of Industrial Relations Prevailing Wage Reporting Form – PWC 100**

This project is funded in whole or in part using Proposition 39 State funding. This statute prohibits sole sourcing of contractors and requires registration with DIR as well as compliance with applicable Prevailing Wage law.

Please use your existing DIR login or register at:

DIR PWC 100 Log-in Site: <https://www.dir.ca.gov/pwc100ext/LoginPage.aspx>



Exhibit D

*MSA-4 LED Lighting – Contract with Fess Energy, Inc. (\$21,921.62)*

## **AGREEMENT BETWEEN OWNER AND CONTRACTOR**

**A G R E E M E N T** made as of the 5th day of June, 2019.

**B E T W E E N** the Owner:

Magnolia Educational & Research Foundation dba  
Magnolia Public Schools  
17125 Victory Boulevard  
Van Nuys, CA 91406

and the Contractor:

FESS Energy, Inc.  
527 S. Lake Avenue  
Pasadena, CA 91101  
Tel: (626) 308-3000  
Fax: (626) 689-6265  
jcrossman@financialenergy.com

the Project is:

Magnolia Science Academy 4  
11330 Graham Place  
Los Angeles, CA 90064

The Owner and Contractor agree as follows.

**ARTICLE 1 THE WORK OF THIS CONTRACT**

This Agreement entered into as of the day and year first written above.

The Contractor shall fully execute the Work described in the Contract Documents, described as follows:

The Work is generally described as the construction work necessary to perform a comprehensive, turnkey, LED Lighting Retrofit for all lighting fixtures, both Interior and Exterior fixtures, including all equipment and materials, installation labor, any sensors and controls necessary for permit or regulatory compliance, permitting, securing rebates, customer acceptance, and warranty.

A more detailed Scope of Work is provided by attaching a TASK ORDER (Exhibits “A”, “B”, and “C”) to this Contract, and the terms and conditions of the Task Order will take precedence.

**ARTICLE 2 RELATIONSHIP OF THE PARTIES**

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Owner and exercise the Contractor’s skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner’s interests. The Owner agrees to furnish and approve, in a timely manner, the information required by the Contractor to perform the Work and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

**ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

**3.1** The date of commencement of the Work shall be per a Notice to Proceed to be issued by the Owner.

**3.2** The Contractor shall have a reasonable period of time to complete this Project, consistent with the timing of the information provided by the Owner concerning the scope of work to be performed.

**ARTICLE 4 BASIS FOR PAYMENT**

**4.1 CONTRACT SUM**

4.1.1 The Owner shall pay the Contractor the Cost of the Work for the scope of work as defined in the Scope and Work Schedule attached hereto as TASK ORDER Exhibit “A” and the Fixed Turnkey Price attached hereto under as TASK ORDER Exhibit “B” Price and Payment Terms.

**ARTICLE 5**

**5.1 PROGRESS PAYMENTS**



5.1.1 The Contractor shall, once every month, deliver to the Owner an application for payment (“Application for Payment”) setting forth the amount which the Contractor believes it is entitled to be paid for the current period. Such Application for Payment shall be supported by such data substantiating the Contractor’s right to payment as the Owner may reasonably require including, without limitation, copies of invoices from Subcontractors and material suppliers, receipts and vouchers, a Prevailing Wage Report using the standard California Department of Industrial Relations form, attached hereto as TASK ORDER Exhibit “C”, and a conditional release of lien upon progress payment and a Conditional Release upon Progress Payment. Upon payment, Contractor shall supply Owner with an Unconditional Release of Lien upon Progress Payment.

5.1.2 The Owner will review each Application for Payment, and will pay the amount due within thirty (30) days after Owner’s receipt of the Application for Payment.

5.1.3 The Contractor shall promptly pay each Subcontractor upon receipt of payment out of the amount paid to the Contractor on account of each Subcontractor’s Work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such Subcontractor’s Work.

5.1.4 The Contractor agrees to keep the Work on the site(s) on which Work is to be performed or materials to be furnished pursuant to the Contract Documents free and clear of all mechanic’s liens and claims of liens, provided that the Owner has paid the Contractor the amount due for the labor, services and materials which are the subject of the lien.

## 5.2 FINAL PAYMENT

5.2.1 Upon receipt of written notice from the Contractor that the Work is complete and ready for final inspection, all corrections made, all reports and there is no other unfinished Work, and upon receipt of a final Application for Payment, including all completed and signed Prevailing Wage Reports using the standard California Department of Industrial Relations form, attached hereto as TASK ORDER Exhibit “C”, the Owner will promptly make such inspection and, when it finds the Work acceptable and the Contract fully performed, the Owner will promptly approve final payment.

5.2.2 Final payment, constituting the unpaid balance of the Contract Sum, if any, (subject to any retention with respect to minor work or defective work) shall be due and payable fifteen (15) days following the receipt of a final Application for Payment provided that as a condition to such payment the Owner has approved the Work, and Contractor has provided an Unconditional Release of Lien upon final payment for itself and all subcontractors or supplier.

5.2.3 If there should remain minor items to be completed, the Contractor and the Owner shall list such items and the Contractor shall deliver, in writing, its unconditional promise to complete said items within a reasonable time following substantial completion of the work. The Owner may retain an amount equal to one and one-half (1-1/2) times the cost to complete the minor work (“punch-list work”), as reasonably determined by Owner, until such time as the punch-list work is completed.

## **ARTICLE 6 THE CONTRACT DOCUMENTS**

**6.1** The Contract Documents consist of this Agreement Between Owner and Contractor, the bid set of Construction Documents, and the Contractor’s proposal attached as Exhibit “A”. The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Change Order. The Contract Documents shall not be construed to create a contractual relationship between the Owner and a Subcontractor or sub-subcontractor between any persons or entities other than the Owner and Contractor.

**6.2** The term “Work” means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor’s obligations. The Work may constitute the whole or a part of the Project.

## **ARTICLE 7 OWNER**

### **7.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

**7.1.1** The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

**7.1.2** The Owner shall pay for the building permit, other permits, governmental fees and charges required for the construction, use or occupancy of permanent structures or permanent changes in existing facilities.

### **7.2 OWNER’S RIGHT TO STOP THE WORK**

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or persistently fails to carry out the Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

### **7.3 OWNER’S RIGHT TO CARRY OUT THE WORK**

If the Contractor defaults or persistently fails or neglects to carry out the Work in accordance with the Contract Documents, or fails to perform a provision of the Contract, the Owner, after ten (10) days written notice to the Contractor and without prejudice to any other remedy the Owner may have, may make good such deficiencies and may deduct the reasonable cost thereof, from the payment then or thereafter due the Contractor.

## **ARTICLE 8 CONTRACTOR**

**8.1** The Contractor shall supervise and direct the Work, using the Contractor’s best skill and attention. The Contractor shall be solely responsible for and have control over construction

means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.

**8.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor’s employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

**8.3** The Contractor shall enforce strict discipline and good order among the Contractor’s employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

**8.4 WARRANTY**

8.4.1 The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. The Contractor’s warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear and normal usage.

8.4.2 Pursuant to the terms of this warranty, the Contractor shall promptly correct Work rejected by the Owner for failing to conform to the requirements of the Contract Documents if discovered within one year after the date of Substantial Completion of the Work, provided that the Owner gives the Contractor prompt written notice of the discovery of the condition. The Contractor shall correct it promptly after receipt of written notice from the Owner to do so.

**8.5 CLEANING UP**

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor’s tools, construction equipment, machinery and surplus material.

**ARTICLE 9 CHANGES IN THE WORK**

**9.1** The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner and Contractor or by a written Construction Change Directive signed by the Owner.

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- (1) employees on the Work and other persons who may be affected thereby;
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The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible, except for damage or loss attributable to acts or omissions of the Owner, and not attributable to the fault or negligence of the Contractor.

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10.2.1 Fingerprinting and Criminal Records Check of Contractor’s Employees.

Contractor shall comply with the provisions of Education Code §45125.1 regarding the submission of fingerprints to the California Department of Justice and the completion of criminal background investigations of the contractor and/or its employees.

Contractor shall not permit any employee to have any contact with school pupils until such time as Contractor has verified in writing to the Owner that such employee has not been convicted of a felony, as defined in Education Code §45125.1.

**ARTICLE 11 INSURANCE**

**11.1 CONTRACTOR’S LIABILITY INSURANCE**

11.1.1 The Contractor shall purchase and maintain such insurance as will protect him from claims set forth below which may arise out of or result from the Contractors operations under the Contract, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for shows acts any of them may be liable:

Workers Compensation and Employers Liability Insurance with limits of not less than required by law.

Commercial General Liability Insurance, (Insurance Services Office, Form CG 00 01 or equivalent), including

- Personal Injury, including accidental death, with limits of not less than One Million Dollar (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate;
- Property Damage, including Broad Form Property Damage Coverage, with limits of not less than One Million Dollars (\$1,000,00) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate;
- Products Liability/Completed Operations Liability, with limits of not less than One Million Dollars (\$1,000,000) in the aggregate; and
- Automobile Liability – One Million dollars (\$1,000,000) for bodily injury and property damage each accident limit.

Before commencing the Work, the Contractor shall furnish a) a certificate, satisfactory to Owner, from each insurance company showing that the above insurance is in force, stating policy numbers, dates of expiration, and limit of liability thereunder and b) a certificate naming Owner as an additional insured on a combination of a ISO form CG 20 37 and an ISO CG 20 10 10/01 form or its approved equivalent.

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### **12.1 ASSIGNMENT OF CONTRACT**

Neither party to the Contract shall assign the Contract without written consent of the other.

### **12.2 GOVERNING LAW**

The Contract shall be governed by the laws of the State of California.

### **12.3 TESTS AND INSPECTIONS**

Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority. The Owner shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures.

## **ARTICLE 13 INDEMNIFICATION**

**13.1** To the fullest extent permitted by law, Contractor agrees to indemnify, hold harmless and defend Owner and its Officers, Agents and Employees from and against any and all claims, losses, damages, liability including defects in the work arising out of the negligent acts, errors or omissions and/or breaches of this agreement except to the extent caused by the active or sole negligence, or willful misconduct of the Owner.

**ARTICLE 14        DISPUTES**

**14.1** All disputes not settled by negotiation or mediation shall be resolved by resort to such rights and remedies as the parties each may have at law or in equity. Except to the extent that this AGREEMENT expressly permits a party to suspend performance, pending final resolution of a dispute, the parties shall each proceed diligently and faithfully with performance of their respective obligations under this AGREEMENT. CONTRACTOR acknowledges and agrees that, should a dispute proceed pursuant to this Section, the only issues that the CONTRACTOR may raise in such proceedings are those that were specifically included in its written claim submitted in accordance with this AGREEMENT, as applicable to the type of WORK. Failure to specifically describe an issue in the written claim within 10 days constitutes a waiver of that claim and shall preclude CONTRACTOR from raising such claim in any court or arbitration proceeding.

This Agreement entered into as of the day and year first written above.

Magnolia Educational & Research  
Foundation dba Magnolia Public Schools

FESS Energy, Inc.

\_\_\_\_\_  
President & CEO (Signature)

\_\_\_\_\_  
CONTRACTOR (Signature)

By: Alfredo Rubalcava  
Its: Chief Executive Officer &  
Superintendent

By: James Crossman  
Its: President  
License Number: C10-958711

**TASK ORDER**  
**Exhibit A**

**Scope of Work and Schedule**

Facility: Magnolia Science Academy 4

Address: 11330 Graham Place, Los Angeles, CA 90064

**Primary Contact for Site:** Patrick Ontiveros, Tel: (213) 628-3634; Email: [pontiveros@magnoliapublicschools.org](mailto:pontiveros@magnoliapublicschools.org)

**Project Manager Name and Contact Info:**

James Richmond, First Note Finance *inc*; Cell: (303) 517-8640; Email: [James@FirstNoteFinance.com](mailto:James@FirstNoteFinance.com)

Amanda Kielian, First Note Finance *inc*; Cell: (650) 534-8102; Email: [Amanda@FirstNoteFinance.com](mailto:Amanda@FirstNoteFinance.com)

**Project Manager Name and Contact Info for CONTRACTOR:**

Jim Crossman, Tel: (303) 883-0515; Email: [jcrossman@financialenergy.com](mailto:jcrossman@financialenergy.com)

John McGuinnis, Tel: (303) 781-8455; Email: [jmcguinnis@financialenergy.com](mailto:jmcguinnis@financialenergy.com)

**Scope of Work Narrative:**

CONTRACTOR shall perform a comprehensive, turnkey, LED Lighting Retrofit for all lighting fixtures, including all equipment and materials, installation labor, using existing sensors, permitting, securing rebates, customer acceptance, and warranty. CONTRACTOR shall perform its own site survey and provide Owner with a scope and price proposal prior to executing this contract. The site survey shall be of sufficient detail to capture in advance any potential change orders, including but not limited to emergency lighting, battery backups, product compatibility with compact fluorescent ballasts, occupancy sensor integration, and/or product voltage compatibility. The annual kWh energy savings of the CONTRACTOR proposed systems shall be within 15% of the calculated energy savings of 23,188 kWh in order to adhere to the CA Proposition 39 funding guidelines. For fluorescent tube fixture retrofits, the Owner's preference is a line-voltage LED replacement where the fluorescent ballasts are removed. CONTRACTOR shall prepare and submit rebate applications and assist Owner with collection of the rebates, even after the on-site work is complete and accepted.

The funding for this project and scope is dependent upon the availability of State Proposition 39 energy funding. The Prop-39 program requires that State funding be encumbered (that is, committed as evidenced by a signed contract) no later than June 30, 2019. If this Agreement is not executed by both parties by June 30, 2019, this Agreement will be null and void and of no further force or effect. Moreover, this Agreement is subject to the availability of public funding, and if the funding is subsequently determined to be unavailable, CONTRACTOR has no right to be compensated for equipment or supplies purchased, or for WORK performed under this Agreement. Therefore CONTRACTOR shall not purchase any equipment or supplies, or perform any WORK under this Agreement until a written, executed, NOTICE TO PROCEED is provided by Magnolia Science Academy. CONTRACTOR shall have no remedy at law or in equity as a consequence of having violated the foregoing provision. This Agreement will automatically terminate on March 15, 2020, if no NOTICE TO PROCEED is issued by Magnolia Science Academy.

**Bill of Materials:**

| <b>Item</b>               | <b>Qty</b> | <b>Manufacturer and Model</b>  |
|---------------------------|------------|--------------------------------|
| 4 lamp driver             | 119        | Philips ICN4P16TLEDSC          |
| 4' 840 LED Tube Optimized | 475        | Philips 10T8 LED48-4000 IF     |
| Green Creative PLC        | 19         | Green Creative 11PLHG4/840/DIR |
|                           |            |                                |
|                           |            |                                |
|                           |            |                                |



**Project Budget: \$21,921.62**

(The PROJECT MANAGER will provide a dollar amount which is the maximum project budget here. This is the maximum amount of project funding secured through the Proposition 39 application.)

**Contingencies/Additional Services Budget: \$3,207.00**

A contingency amount of \$3,207.00 to cover changes to cover unforeseen circumstances in the project.

**School Budget for LAUSD District Review Process: \$5,000.00**

The amount of \$5,000.00 will be paid by the school to LAUSD for their project approval review fees.

**Tabular Listing of the Work to be Performed:**

|                                   |                    |
|-----------------------------------|--------------------|
| Interior: Line Voltage LED Tubes: | \$20,566.40        |
| Interior/Exterior: LED Bulbs:     | \$1,355.22         |
| <b>Total LED Retrofit:</b>        | <b>\$21,921.62</b> |

**Schedule:** The LED lighting project is requested to be undertaken during after regular school hours or during the upcoming Summer Break as soon as possible as determined by school client.

**Product Cut Sheets:**

A comprehensive set of project cut sheets will be submitted by CONTRACTOR and included here by reference attachment.

The link name is

[https://www.dropbox.com/sh/mcy0848yagwxzgv/AAAd2\\_7cT75A004mZapuhuZaa?dl=0](https://www.dropbox.com/sh/mcy0848yagwxzgv/AAAd2_7cT75A004mZapuhuZaa?dl=0)

**Exhibit B**

**Price and Payment Terms**

**Fixed Turnkey Price: \$ 21,921.62**

(This is the fixed turnkey price to be paid to CONTRACTOR for its completion of the Work, including all products, parts, materials, labor, travel expenses, permits and overhead. CONTRACTOR’s price shall be in conformance with its bid that it submitted with the RFQ.)

**Payment Terms:**

- One final invoice per the following Schedule of Values. Payment terms at net 15 days.
- Joint-party checks to ensure payment to equipment suppliers shall be indicated on Final Invoice. All material & equipment suppliers shall be identified, so joint-party checks can be issued.
- Unconditional Waiver and Release upon Final Payment (California Civil Code 8138) is required from all equipment suppliers and/or subcontractors for final payment.
- Unconditional Waiver and Release upon Final Payment (California Civil Code 8138) from the CONTRACTOR is required for final payment.

**Schedule of Values:**

| Bid Form & Schedule of Values for OPTION B – Low Voltage / External Driver   |  |  |  |   |                        |                       |                         |
|--|--|--|--|---|------------------------|-----------------------|-------------------------|
| Date: 05/23 Company: FESS Energy   |  | Email: mkottenstette@financialenergy.com                           |  |   |                        |                       |                         |
| Name: Matthew Kottenstette   |  | Telephone: (303) 562-7145  |  |   |                        |                       |                         |
| Magnolia #4  | <b>PRICE OF</b>  |  |  |   |                        |                       |                         |
|  | Interior Fluorescent Tube Fixture Retrofit (1)                   | Interior Bulb Retrofit (2)   | Exterior Lighting Retrofit (3)                   | Occupancy Sensors (4)                           | Schedule of Values (5) | Estimated Rebates (6) | Payer(s) of Rebates (7) |
| <b>Option B Low Voltage Lamp and External Driver Retrofit Approach</b>   |  |  |  |   |                        |                       |                         |
| 1  | Magnolia #4 Lighting Products                                    | \$6,691.99   | \$336.49   | \$0.00  | \$0.00                 | \$7,028.47            | LADWP                   |
| 7  | Magnolia #4 Lighting Installation Labor, Lamp & Ballast Disposal | \$13,463.10  | \$991.63   | \$0.00  | \$0.00                 | \$14,454.73           |                         |
| 13   | Magnolia #4 Cost of Permits and Inspections                      | \$411.33   | \$27.10  | \$0.00  | \$0.00                 | \$438.43              |                         |
| <b>TOTAL TURNKEY FIXED PRICE:</b>  |  | <b>\$20,566.40</b>   | <b>\$1,355.22</b>                                | <b>\$0.00</b>                                   | <b>\$0.00</b>          | <b>100%</b>           |                         |
|  |  |  |  |   |                        | \$21,921.63           |                         |
| <b>Please list the DLC product numbers for the lighting products included in the Option B – Low Voltage Lamp and External Drivers.</b>   |  |  |  |   |                        |                       |                         |
| DLC Number   | Product Description and Lamp or Fixture Lumens                   | Includes Integrated Area Controls or Occupancy Sensing? (Yes / No) | Includes Integrated Dimming Controls? (Yes / No) | Product Cut Sheet Provided with Bid? (Yes / No) |                        |                       |                         |
|  | Watt Stopper CI-205  | Yes  | No   | Yes   |                        |                       |                         |
|  | Watt Stopper BZ-50   | Yes  | No   | Yes   |                        |                       |                         |
|  | Green Creative 11PLHG4/840/DIR                                   | No   | No   | Yes   |                        |                       |                         |
|  | ICN4P16TLEDN35M  | No   | No   | Yes   |                        |                       |                         |
|  | Philips 10T8 LED/48-4000 IF                                      | No   | Yes  | Yes   |                        |                       |                         |
| I, (name) Matthew Kottenstette, am qualified to make this bid-offer commitment on behalf of my company. The fixed, turnkey price provided is all-inclusive. I understand that this bid is provided to the client without expectation for compensation of any kind for the cost of preparing it, and that the Client (Magnolia #4), or its designated Energy Manager (First Note Finance inc) may reject this bid if it is not responsive, complete or submitted after Thursday, May 30, 2019, 6:00 PM. |  |  |  |   |                        |                       |                         |

**Exhibit C**  
**CA Department of Industrial Relations Prevailing Wage Reporting Form – PWC 100**

This project is funded in whole or in part using Proposition 39 State funding. This statute prohibits sole sourcing of contractors and requires registration with DIR as well as compliance with applicable Prevailing Wage law.

Please use your existing DIR login or register at:

DIR PWC 100 Log-in Site: <https://www.dir.ca.gov/pwc100ext/LoginPage.aspx>



Exhibit E

*MSA-5 LED Lighting – Contract with Fess Energy, Inc. (\$47,582.00)*

## **AGREEMENT BETWEEN OWNER AND CONTRACTOR**

**A G R E E M E N T** made as of the 4<sup>th</sup> day of June, 2019.

Between the Owner:

Magnolia Science Academy 5  
18230 Kittridge Street  
Reseda, CA 91335

and the Contractor:

FESS Energy, Inc.  
527 S. Lake Avenue  
Pasadena, CA 91101  
Tel: (626) 308-3000  
Fax: (626) 689-6265  
jcrossman@financialenergy.com

the Project is:

Magnolia Science Academy 5  
18230 Kittridge Street  
Reseda, CA 91335

The Owner and Contractor agree as follows.

**ARTICLE 1 THE WORK OF THIS CONTRACT**

This Agreement entered into as of the day and year first written above.

The Contractor shall fully execute the Work described in the Contract Documents, described as follows:

The Work is generally described as the construction work necessary to perform a comprehensive, turnkey, LED Lighting Retrofit for all lighting fixtures, both Interior and Exterior fixtures, including all equipment and materials, installation labor, any sensors and controls necessary for permit or regulatory compliance, permitting, securing rebates, customer acceptance, and warranty.

A more detailed Scope of Work is provided by attaching a TASK ORDER (Exhibits “A”, “B”, and “C”) to this Contract, and the terms and conditions of the Task Order will take precedence.

**ARTICLE 2 RELATIONSHIP OF THE PARTIES**

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Owner and exercise the Contractor’s skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner’s interests. The Owner agrees to furnish and approve, in a timely manner, the information required by the Contractor to perform the Work and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

**ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

**3.1** The date of commencement of the Work shall be per a Notice to Proceed to be issued by the Owner.

**3.2** The Contractor shall have a reasonable period of time to complete this Project, consistent with the timing of the information provided by the Owner concerning the scope of work to be performed.

**ARTICLE 4 BASIS FOR PAYMENT**

**4.1 CONTRACT SUM**

4.1.1 The Owner shall pay the Contractor the Cost of the Work for the scope of work as defined in the Scope and Work Schedule attached hereto as TASK ORDER Exhibit “A” and the Fixed Turnkey Price attached hereto under as TASK ORDER Exhibit “B” Price and Payment Terms.

**ARTICLE 5**

**5.1 PROGRESS PAYMENTS**

5.1.1 The Contractor shall, once every month, deliver to the Owner an application for payment (“Application for Payment”) setting forth the amount which the Contractor believes it is entitled to be paid for the current period. Such Application for Payment shall be supported by such data substantiating the Contractor’s right to payment as the Owner may reasonably require including, without limitation, copies of invoices from Subcontractors and material suppliers, receipts and vouchers, a Prevailing Wage Report using the standard California Department of Industrial Relations form, attached hereto as TASK ORDER Exhibit “C”, and a conditional release of lien upon progress payment and a Conditional Release upon Progress Payment. Upon payment, Contractor shall supply Owner with an Unconditional Release of Lien upon Progress Payment.

5.1.2 The Owner will review each Application for Payment, and will pay the amount due within thirty (30) days after Owner’s receipt of the Application for Payment.

5.1.3 The Contractor shall promptly pay each Subcontractor upon receipt of payment out of the amount paid to the Contractor on account of each Subcontractor’s Work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such Subcontractor’s Work.

5.1.4 The Contractor agrees to keep the Work on the site(s) on which Work is to be performed or materials to be furnished pursuant to the Contract Documents free and clear of all mechanic’s liens and claims of liens, provided that the Owner has paid the Contractor the amount due for the labor, services and materials which are the subject of the lien.

## 5.2 FINAL PAYMENT

5.2.1 Upon receipt of written notice from the Contractor that the Work is complete and ready for final inspection, all corrections made, all reports and there is no other unfinished Work, and upon receipt of a final Application for Payment, including all completed and signed Prevailing Wage Reports using the standard California Department of Industrial Relations form, attached hereto as TASK ORDER Exhibit “C”, the Owner will promptly make such inspection and, when it finds the Work acceptable and the Contract fully performed, the Owner will promptly approve final payment.

5.2.2 Final payment, constituting the unpaid balance of the Contract Sum, if any, (subject to any retention with respect to minor work or defective work) shall be due and payable fifteen (15) days following the receipt of a final Application for Payment provided that as a condition to such payment the Owner has approved the Work, and Contractor has provided an Unconditional Release of Lien upon final payment for itself and all subcontractors or supplier.

5.2.3 If there should remain minor items to be completed, the Contractor and the Owner shall list such items and the Contractor shall deliver, in writing, its unconditional promise to complete said items within a reasonable time following substantial completion of the work. The Owner may retain an amount equal to one and one-half (1-1/2) times the cost to complete the minor work (“punch-list work”), as reasonably determined by Owner, until such time as the punch-list work is completed.

## **ARTICLE 6 THE CONTRACT DOCUMENTS**

**6.1** The Contract Documents consist of this Agreement Between Owner and Contractor, the bid set of Construction Documents, and the Contractor’s proposal attached as Exhibit “A”. The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Change Order. The Contract Documents shall not be construed to create a contractual relationship between the Owner and a Subcontractor or sub-subcontractor between any persons or entities other than the Owner and Contractor.

**6.2** The term “Work” means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor’s obligations. The Work may constitute the whole or a part of the Project.

## **ARTICLE 7 OWNER**

### **7.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

**7.1.1** The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

**7.1.2** The Owner shall pay for the building permit, other permits, governmental fees and charges required for the construction, use or occupancy of permanent structures or permanent changes in existing facilities.

### **7.2 OWNER’S RIGHT TO STOP THE WORK**

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or persistently fails to carry out the Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

### **7.3 OWNER’S RIGHT TO CARRY OUT THE WORK**

If the Contractor defaults or persistently fails or neglects to carry out the Work in accordance with the Contract Documents, or fails to perform a provision of the Contract, the Owner, after ten (10) days written notice to the Contractor and without prejudice to any other remedy the Owner may have, may make good such deficiencies and may deduct the reasonable cost thereof, from the payment then or thereafter due the Contractor.

## **ARTICLE 8 CONTRACTOR**

**8.1** The Contractor shall supervise and direct the Work, using the Contractor’s best skill and attention. The Contractor shall be solely responsible for and have control over construction



means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.

**8.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor’s employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

**8.3** The Contractor shall enforce strict discipline and good order among the Contractor’s employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

**8.4 WARRANTY**

8.4.1 The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. The Contractor’s warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear and normal usage.

8.4.2 Pursuant to the terms of this warranty, the Contractor shall promptly correct Work rejected by the Owner for failing to conform to the requirements of the Contract Documents if discovered within one year after the date of Substantial Completion of the Work, provided that the Owner gives the Contractor prompt written notice of the discovery of the condition. The Contractor shall correct it promptly after receipt of written notice from the Owner to do so.

**8.5 CLEANING UP**

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor’s tools, construction equipment, machinery and surplus material.

**ARTICLE 9 CHANGES IN THE WORK**

**9.1** The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner and Contractor or by a written Construction Change Directive signed by the Owner.

**ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

**10.1 SAFETY PRECAUTIONS AND PROGRAMS**

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- (1) employees on the Work and other persons who may be affected thereby;
- (2) the Work and materials and equipment to be incorporated therein; and
- (3) other property at the site or adjacent thereto.

The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible, except for damage or loss attributable to acts or omissions of the Owner, and not attributable to the fault or negligence of the Contractor.

## **10.2 PROTECTION OF STUDENTS – WORK DURING SCHOOL HOURS**

### **10.2.1 Fingerprinting and Criminal Records Check of Contractor’s Employees.**

Contractor shall comply with the provisions of Education Code §45125.1 regarding the submission of fingerprints to the California Department of Justice and the completion of criminal background investigations of the contractor and/or its employees.

Contractor shall not permit any employee to have any contact with school pupils until such time as Contractor has verified in writing to the Owner that such employee has not been convicted of a felony, as defined in Education Code §45125.1.

## **ARTICLE 11 INSURANCE**

### **11.1 CONTRACTOR’S LIABILITY INSURANCE**

11.1.1 The Contractor shall purchase and maintain such insurance as will protect him from claims set forth below which may arise out of or result from the Contractors operations under the Contract, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for shows acts any of them may be liable:

Workers Compensation and Employers Liability Insurance with limits of not less than required by law.

Commercial General Liability Insurance, (Insurance Services Office, Form CG 00 01 or equivalent), including

- Personal Injury, including accidental death, with limits of not less than One Million Dollar (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate;
- Property Damage, including Broad Form Property Damage Coverage, with limits of not less than One Million Dollars (\$1,000,00) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate;
- Products Liability/Completed Operations Liability, with limits of not less than One Million Dollars (\$1,000,000) in the aggregate; and
- Automobile Liability – One Million dollars (\$1,000,000) for bodily injury and property damage each accident limit.

Before commencing the Work, the Contractor shall furnish a) a certificate, satisfactory to Owner, from each insurance company showing that the above insurance is in force, stating policy numbers, dates of expiration, and limit of liability thereunder and b) a certificate naming Owner as an additional insured on a combination of a ISO form CG 20 37 and an ISO CG 20 10 10/01 form or its approved equivalent.

**ARTICLE 12 MISCELLANEOUS PROVISIONS**

**12.1 ASSIGNMENT OF CONTRACT**

Neither party to the Contract shall assign the Contract without written consent of the other.

**12.2 GOVERNING LAW**

The Contract shall be governed by the laws of the State of California.

**12.3 TESTS AND INSPECTIONS**

Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority. The Owner shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures.

**ARTICLE 13 INDEMNIFICATION**

**13.1** To the fullest extent permitted by law, Contractor agrees to indemnify, hold harmless and defend Owner and its Officers, Agents and Employees from and against any and all claims, losses, damages, liability including defects in the work arising out of the negligent acts, errors or omissions and/or breaches of this agreement except to the extent caused by the active or sole negligence, or willful misconduct of the Owner.

**ARTICLE 14        DISPUTES**

**14.1** All disputes not settled by negotiation or mediation shall be resolved by resort to such rights and remedies as the parties each may have at law or in equity. Except to the extent that this AGREEMENT expressly permits a party to suspend performance, pending final resolution of a dispute, the parties shall each proceed diligently and faithfully with performance of their respective obligations under this AGREEMENT. CONTRACTOR acknowledges and agrees that, should a dispute proceed pursuant to this Section, the only issues that the CONTRACTOR may raise in such proceedings are those that were specifically included in its written claim submitted in accordance with this AGREEMENT, as applicable to the type of WORK. Failure to specifically describe an issue in the written claim within 10 days constitutes a waiver of that claim and shall preclude CONTRACTOR from raising such claim in any court or arbitration proceeding.

This Agreement entered into as of the day and year first written above.

Magnolia Educational & Research  
Foundation dba Magnolia Public Schools

FESS Energy, Inc.

\_\_\_\_\_  
President & CEO (Signature)

\_\_\_\_\_  
CONTRACTOR (Signature)

By: Alfredo Rubalcava

By: James Crossman

Its: President

Its: Chief Executive Officer &  
Superintendent

License Number: C10-958711

**TASK ORDER**  
**Exhibit A**

**Scope of Work and Schedule**

Facility: Magnolia Science Academy 5

Address: 18230 Kittridge Street, Reseda, CA 91335

**Primary Contact for Site:** Patrick Ontiveros, Tel: (213) 628-3634; Email: [pontiveros@magnoliapublicschools.org](mailto:pontiveros@magnoliapublicschools.org)

Project Manager Name and Contact Info:

James Richmond, First Note Finance *inc*; Cell: (303) 517-8640; Email: [James@FirstNoteFinance.com](mailto:James@FirstNoteFinance.com)

Amanda Kielian, First Note Finance *inc*; Cell: (650) 534-8102; Email: [Amanda@FirstNoteFinance.com](mailto:Amanda@FirstNoteFinance.com)

**Project Manager Name and Contact Info for CONTRACTOR:**

Jim Crossman, Tel: (303) 883-0515; Email: [jcrossman@financialenergy.com](mailto:jcrossman@financialenergy.com)

John McGuinnis, Tel: (303) 781-8455; Email: [jmcguinnis@financialenergy.com](mailto:jmcguinnis@financialenergy.com)

**Scope of Work Narrative:**

CONTRACTOR shall perform a comprehensive, turnkey, LED Lighting Retrofit for all lighting fixtures, both Interior and Exterior, including all equipment and materials, installation labor, any sensors and controls necessary for permit or regulatory compliance, permitting, securing rebates, customer acceptance, and warranty.

All existing fluorescent T8 and T12 fixtures will be modified in that the ballast will be removed and replaced with 0-10V dimmable Philips LED drivers and DLC listed Philips LED tubes as outlined in the LAUSD specification. By separating the driver from the tubes, the installation is safer, the life of the LEDs is extended, and it is capable to dim the lights. Ambient dimming controls shall be added to 9 classrooms to dim the lights in response to daylight. All existing interior incandescent and compact fluorescent fixtures shall be upgraded to LED. In fixtures with ballasts, the ballast will be bypassed and wired to line voltage. Exterior HID fixtures shall be replaced with new LED lighting fixtures.

The annual kWh energy savings of the CONTRACTOR proposed systems shall be within 15% of the calculated energy savings of 28,256 kWh in order to adhere to the CA Proposition 39 funding guidelines.

The funding for this project and scope is dependent upon the availability of State Proposition 39 energy funding. The Prop-39 program requires that State funding be encumbered (that is, committed as evidenced by a signed contract) no later than June 30, 2019. If this Agreement is not executed by both parties by June 30, 2019, this Agreement will be null and void and of no further force or effect. Moreover, this Agreement is subject to the availability of public funding, and if the funding is subsequently determined to be unavailable, CONTRACTOR has no right to be compensated for equipment or supplies purchased, or for WORK performed under this Agreement. Therefore CONTRACTOR shall not purchase any equipment or supplies, or perform any WORK under this Agreement until a written, executed, NOTICE TO PROCEED is provided by Magnolia Science Academy. CONTRACTOR shall have no remedy at law or in equity as a consequence of having violated the foregoing provision. This Agreement will automatically terminate on March 15, 2020, if no NOTICE TO PROCEED is issued by Magnolia Science Academy.

**Bill of Materials:**

| <b><u>Item</u></b>        | <b><u>Qty</u></b> | <b><u>Manufacturer and Model</u></b> |
|---------------------------|-------------------|--------------------------------------|
| 9 Watt A19                | 2                 | Green Creative 9A19G4/840            |
| 2 lamp driver             | 27                | Philips IZT2P16TLEDSC                |
| 4 lamp driver             | 145               | Philips IZT4P16TLEDSC                |
| 4' 840 LED Tube Optimized | 489               | Philips 13T8 LED48-4000 IF DIM       |
| Ambient Dimming Sensor    | 9                 | Watt Stopper LS-301                  |
| Canopy Light              | 3                 | LA Lighting BCL1001 Canopy           |
| Wall Pack                 | 4                 | Hubbell LNC2 Wall Pack               |
| Exit Sign                 | 4                 | CREE E-XPL2RBW                       |
| Battery Kit               | 7                 | Keystone KT-EMRG-LED-5-500-K1        |

**Project Budget: \$ 47,582.00**

(The PROJECT MANAGER will provide a dollar amount which is the maximum project budget here. This is the maximum amount of project funding secured through the Proposition 39 application.)

**Tabular Listing of the Work to be Performed:**

|  |                     |
|--|---------------------|
| Interior: Line Voltage LED Tubes:      | \$ 31,324.69        |
| Interior: LED Bulbs:                   | \$ 705.56           |
| Exterior: LED Retrofit:                | \$ 6,180.73         |
| Interior: Lighting Occupancy Controls: | \$ <u>9,371.02</u>  |
| <b>Total LED Retrofit:</b>             | <b>\$ 47,582.00</b> |

**Schedule:** The LED lighting project is requested to be undertaken during after regular school hours as soon as possible as determined by school client.

**Product Cut Sheets:**

A comprehensive set of project cut sheets will be submitted by CONTRACTOR and included here by reference attachment.

The link name is

**<https://www.dropbox.com/sh/nhdt8rbliyvpqpt/AADScMLKYvQ8QSsnQ32TglO7a?dl=0>**

**Exhibit B****Price and Payment Terms****Fixed Turnkey Price: \$ 47,582.00**

(This is the fixed turnkey price to be paid to CONTRACTOR for its completion of the Work, including all products, parts, materials, labor, travel expenses, permits and overhead. CONTRACTOR's price shall be in conformance with its bid that it submitted with the RFQ.)

**Add Alternate (Option B): \$141,292.00**

A Hybrid Approach combining Line Voltage and New Fixture Retrofit options is available as an add alternate for an additional \$141,292.00. Magnolia will indicate whether the add-alternate approach is accepted if/when it issues its Notice to Proceed.

**Contingencies/ Additional Services Budget: \$4,758.00**

A contingency amount of \$4,758.00 to cover changes to cover unforeseen circumstances in the project.

**School Budget for LAUSD District Review Process: \$10,000.00**

The amount of \$10,000.00 will be reserved and paid by the school to LAUSD for their project approval review fees.

**Payment Terms:**

- One final invoice per the following Schedule of Values. Payment terms at net 15 days.
- Joint-party checks to ensure payment to equipment suppliers shall be indicated on Final Invoice. All material & equipment suppliers shall be identified, so joint-party checks can be issued.
- Unconditional Waiver and Release upon Final Payment (California Civil Code 8138) is required from all equipment suppliers and/or subcontractors for final payment.
- Unconditional Waiver and Release upon Final Payment (California Civil Code 8138) from the CONTRACTOR is required for final payment.



Schedule of Values:

| Bid Form & Schedule of Values for OPTION B – Low Voltage / External Driver   |  |  |  |   |                       |                        |                         |
|--|--|--|--|---|-----------------------|------------------------|-------------------------|
| Date: 05/22 Company: FESS Energy   |  |  |  | Email: mkottenstette@financialenergy.com        |                       |                        |                         |
| Name: Matthew Kottenstette   |  | Telephone: (303) 562-7145  |  |   |                       |                        |                         |
| <b>Magnolia #5</b>   |  |  |  | <b>PRICE OF</b>                                 |                       |                        |                         |
|  |  | Interior Fluorescent Tube Fixture Retrofit (1)                     | Interior Bulb Retrofit (2)                       | Exterior Lighting Retrofit (3)                  | Occupancy Sensors (4) | Schedule of Values (5) | Payer(s) of Rebates (7) |
| <b>Option B Low Voltage Lamp and External Driver Retrofit Approach</b>   |  |  |  |   |                       |                        |                         |
| 1  | Magnolia #5 Lighting Products                                    | \$11,194.36  | \$105.75   | \$2,522.41                                      | \$1,388.97            | \$15,211.50            | LADWP                   |
| 7  | Magnolia #5 Lighting Installation Labor, Lamp & Ballast Disposal | \$19,503.83  | \$585.69   | \$3,534.70                                      | \$7,794.63            | \$31,418.86            |                         |
| 13   | Magnolia #5 Cost of Permits and Inspections                      | \$626.49   | \$14.11  | \$123.61  | \$187.42              | \$951.64               |                         |
| <b>TOTAL TURNKEY FIXED PRICE:</b>  |  | \$31,324.69  | \$705.56   | \$6,180.73                                      | \$9,371.02            | 100%                   |                         |
| <b>Please list the DLC product numbers for the lighting products included in the Option B – Low Voltage Lamp and External Drivers.</b>   |  |  |  |   |                       |                        |                         |
| DLC Number   | Product Description and Lamp or Fixture Lumens                   | Includes Integrated Area Controls or Occupancy Sensing? (Yes / No) | Includes Integrated Dimming Controls? (Yes / No) | Product Cut Sheet Provided with Bid? (Yes / No) |                       |                        |                         |
|  | LA Lighting BCL1001 Canopy                                       | No   | Yes  | Yes   |                       |                        |                         |
|  | Green Creative 9A19G4/840  | No   | No   | Yes   |                       |                        |                         |
|  | Hubbell LNC2 Wall Pack   | Yes  | Yes  | Yes   |                       |                        |                         |
|  | E-conolight E-XML2W  | No   | No   | Yes   |                       |                        |                         |
|  | Philips 13T8 LED48-4000 IF DIM                                   | No   | Yes  | Yes   |                       |                        |                         |
|  | Philips IZ2P16TLEDSC   | No   | Yes  | Yes   |                       |                        |                         |
|  | Philips IZ4P16TLEDSC   | No   | Yes  | Yes   |                       |                        |                         |
| I, (name) Matthew Kottenstette, am qualified to make this bid-offer commitment on behalf of my company. The fixed, turnkey price provided is all-inclusive. I understand that this bid is provided to the client without expectation for compensation of any kind for the cost of preparing it, and that the Client (Magnolia #5), or its designated Energy Manager (First Note Finance inc) may reject this bid if it is not responsive, complete or submitted after Friday, May 24, 2019, 6:00 PM. |  |  |  |   |                       |                        |                         |

**Exhibit C**

**CA Department of Industrial Relations Prevailing Wage Reporting Form – PWC 100**

This project is funded in whole or in part using Proposition 39 State funding. This statute prohibits sole sourcing of contractors and requires registration with DIR as well as compliance with applicable Prevailing Wage law.

Please use your existing DIR login or register at:

DIR PWC 100 Log-in Site: <https://www.dir.ca.gov/pwc100ext/LoginPage.aspx>



Exhibit F

*MSA-8 HVAC - Contract with Mesa Energy Systems, Inc (\$26,040.00)*

## **AGREEMENT BETWEEN OWNER AND CONTRACTOR**

**A G R E E M E N T** made as of the 4th day of June, 2019.

**B E T W E E N** the Owner:

Magnolia Educational & Research Foundation dba  
Magnolia Public Schools  
17125 Victory Boulevard  
Van Nuys, CA 91406

and the Contractor:

Mesa Energy Systems, Inc.  
2 Cromwell  
Irvine, CA 92618

the Project is:

Magnolia Science Academy 8  
6411 Orchard Ave  
Bell, CA 90201

The Owner and Contractor agree as follows.

**ARTICLE 1 THE WORK OF THIS CONTRACT**

This Agreement entered into as of the day and year first written above.

The Contractor shall fully execute the Work described in the Contract Documents, described as follows:

The Work is generally described as the construction work necessary to provide turnkey installation of twenty-two (22) programmable, networking thermostats. These replacement thermostats will wire directly to the existing units. The project is to be implemented as soon as possible as determined by school client. The project includes development of all documentation required for permit from the local jurisdiction and a full one (1) year replacement labor warranty and warranty to commence upon startup of equipment.

A more detailed Scope of Work is provided by attaching a TASK ORDER (Exhibits “A”, “B”, and “C”) to this Contract, and the terms and conditions of the Task Order will take precedence

**ARTICLE 2 RELATIONSHIP OF THE PARTIES**

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Owner and exercise the Contractor’s skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner’s interests. The Owner agrees to furnish and approve, in a timely manner, the information required by the Contractor to perform the Work and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

**ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

**3.1** The date of commencement of the Work shall be per a Notice to Proceed to be issued by the Owner.

**3.2** The Contractor shall have a reasonable period of time to complete this Project, consistent with the timing of the information provided by the Owner concerning the scope of work to be performed.

**ARTICLE 4 BASIS FOR PAYMENT**

**4.1 CONTRACT SUM**

**4.1.1** The Owner shall pay the Contractor the Cost of the Work for the scope of work as defined in the Scope and Work Schedule attached hereto as TASK ORDER Exhibit “A” and the Fixed Turnkey Price attached hereto under as TASK ORDER Exhibit “B” Price and Payment Terms.

## ARTICLE 5

### 5.1 PROGRESS PAYMENTS

5.1.1 The Contractor shall, once every month, deliver to the Owner an application for payment (“Application for Payment”) setting forth the amount which the Contractor believes it is entitled to be paid for the current period. Such Application for Payment shall be supported by such data substantiating the Contractor’s right to payment as the Owner may reasonably require including, without limitation, copies of invoices from Subcontractors and material suppliers, receipts and vouchers, a Prevailing Wage Report using the standard California Department of Industrial Relations form, attached hereto as TASK ORDER Exhibit “C”, and a conditional release of lien upon progress payment and a Conditional Release upon Progress Payment. Upon payment, Contractor shall supply Owner with an Unconditional Release of Lien upon Progress Payment.

5.1.2 The Owner will review each Application for Payment, and will pay the amount due within thirty (30) days after Owner’s receipt of the Application for Payment.

5.1.3 The Contractor shall promptly pay each Subcontractor upon receipt of payment out of the amount paid to the Contractor on account of each Subcontractor’s Work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such Subcontractor’s Work.

5.1.4 The Contractor agrees to keep the Work on the site(s) on which Work is to be performed or materials to be furnished pursuant to the Contract Documents free and clear of all mechanic’s liens and claims of liens, provided that the Owner has paid the Contractor the amount due for the labor, services and materials which are the subject of the lien.

### 5.2 FINAL PAYMENT

5.2.1 Upon receipt of written notice from the Contractor that the Work is complete and ready for final inspection, all corrections made, all reports and there is no other unfinished Work, and upon receipt of a final Application for Payment, including all completed and signed Prevailing Wage Reports using the standard California Department of Industrial Relations form, attached hereto as TASK ORDER Exhibit “C”, the Owner will promptly make such inspection and, when it finds the Work acceptable and the Contract fully performed, the Owner will promptly approve final payment.

5.2.2 Final payment, constituting the unpaid balance of the Contract Sum, if any, (subject to any retention with respect to minor work or defective work) shall be due and payable thirty (30) days following the receipt of a final Application for Payment provided that as a condition to such payment the Owner has approved the Work, and Contractor has provided an Unconditional Release of Lien upon final payment for itself and all subcontractors or supplier.

5.2.3 If there should remain minor items to be completed, the Contractor and the Owner shall list such items and the Contractor shall deliver, in writing, its unconditional promise to complete said items within a reasonable time following substantial completion of the work. The Owner may retain an amount equal to one and one-half (1-1/2) times the cost to complete the minor

work (“punch-list work”), as reasonably determined by Owner, until such time as the punch-list work is completed.

## **ARTICLE 6 THE CONTRACT DOCUMENTS**

**6.1** The Contract Documents consist of this Agreement Between Owner and Contractor, the bid set of Construction Documents, and the Contractor’s proposal attached as Exhibit “A”. The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Change Order. The Contract Documents shall not be construed to create a contractual relationship between the Owner and a Subcontractor or sub-subcontractor between any persons or entities other than the Owner and Contractor.

**6.2** The term “Work” means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor’s obligations. The Work may constitute the whole or a part of the Project.

## **ARTICLE 7 OWNER**

### **7.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

7.1.1 The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

7.1.2 The Contractor shall pay for the building permit and final inspection. Owner shall pay other permits, governmental fees and charges required for the construction, use or occupancy of permanent structures or permanent changes in existing facilities.

### **7.2 OWNER’S RIGHT TO STOP THE WORK**

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or persistently fails to carry out the Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

### **7.3 OWNER’S RIGHT TO CARRY OUT THE WORK**

If the Contractor defaults or persistently fails or neglects to carry out the Work in accordance with the Contract Documents, or fails to perform a provision of the Contract, the Owner, after ten (10) days written notice to the Contractor and without prejudice to any other remedy the Owner may have, may make good such deficiencies and may deduct the reasonable cost thereof, from the payment then or thereafter due the Contractor.

## **ARTICLE 8 CONTRACTOR**

**8.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.

**8.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

**8.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

### **8.4 WARRANTY**

**8.4.1** The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear and normal usage.

**8.4.2** Pursuant to the terms of this warranty, the Contractor shall promptly correct Work rejected by the Owner for failing to conform to the requirements of the Contract Documents if discovered within one year after the date of Substantial Completion of the Work, provided that the Owner gives the Contractor prompt written notice of the discovery of the condition. The Contractor shall correct it promptly after receipt of written notice from the Owner to do so.

### **8.5 CLEANING UP**

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus material.

## **ARTICLE 9 CHANGES IN THE WORK**

**9.1** The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner and Contractor or by a written Construction Change Directive signed by the Owner.



## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **10.1 SAFETY PRECAUTIONS AND PROGRAMS**

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- (1) employees on the Work and other persons who may be affected thereby;
- (2) the Work and materials and equipment to be incorporated therein; and
- (3) other property at the site or adjacent thereto.

The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible, except for damage or loss attributable to acts or omissions of the Owner, and not attributable to the fault or negligence of the Contractor.

### **10.2 PROTECTION OF STUDENTS – WORK DURING SCHOOL HOURS**

#### **10.2.1 Fingerprinting and Criminal Records Check of Contractor’s Employees.**

Contractor shall comply with the provisions of Education Code §45125.1 regarding the submission of fingerprints to the California Department of Justice and the completion of criminal background investigations of the contractor and/or its employees.

Contractor shall not permit any employee to have any contact with school pupils until such time as Contractor has verified in writing to the Owner that such employee has not been convicted of a felony, as defined in Education Code §45125.1.

## **ARTICLE 11 INSURANCE**

### **11.1 CONTRACTOR’S LIABILITY INSURANCE**

11.1.1 The Contractor shall purchase and maintain such insurance as will protect him from claims set forth below which may arise out of or result from the Contractor’s operations under the Contract, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

Worker’s Compensation and Employer’s Liability Insurance with limits of not less than required by law.

Commercial General Liability Insurance, (Insurance Services Office, Form CG 00 01 or equivalent), including

- Personal Injury, including accidental death, with limits of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate;
- Property Damage, including Broad Form Property Damage Coverage, with limits of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate;
- Products Liability/Completed Operations Liability, with limits of not less than One Million Dollars (\$1,000,000) in the aggregate; and
- Automobile Liability - One million dollars (\$1,000,000) for bodily injury and property damage each accident limit.

Before commencing the Work, the Contractor shall furnish a) certificate, satisfactory to Owner, from each insurance company showing that the above insurance is in force, stating policy numbers, dates of expiration, and limit of liability thereunder and b) a certificate naming Owner as an additional insured on a combination of a ISO form CG 20 37 and an ISO CG 20 10 10/01 form or its approved equivalent.

## **ARTICLE 12 MISCELLANEOUS PROVISIONS**

### **12.1 ASSIGNMENT OF CONTRACT**

Neither party to the Contract shall assign the Contract without written consent of the other.

### **12.2 GOVERNING LAW**

The Contract shall be governed by the laws of the State of California.

### **12.3 TESTS AND INSPECTIONS**

Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority. The Owner shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures.

## **ARTICLE 13 INDEMNIFICATION**

**13.1** To the fullest extent permitted by law, Contractor agrees to indemnify, hold harmless and defend Owner and its Officers, Agents and Employees from and against any and all claims, losses, damages, liability including defects in the work arising out of the negligent acts, errors or

omissions and/or breaches of this agreement except to the extent caused by the active or sole negligence, or willful misconduct of the Owner.

**ARTICLE 14        DISPUTES**

**14.1** All disputes not settled by negotiation or mediation shall be resolved by resort to such rights and remedies as the parties each may have at law or in equity. Except to the extent that this AGREEMENT expressly permits a party to suspend performance, pending final resolution of a dispute, the parties shall each proceed diligently and faithfully with performance of their respective obligations under this AGREEMENT. CONTRACTOR acknowledges and agrees that, should a dispute proceed pursuant to this Section, the only issues that the CONTRACTOR may raise in such proceedings are those that were specifically included in its written claim submitted in accordance with this AGREEMENT, as applicable to the type of WORK. Failure to specifically describe an issue in the written claim within 10 days constitutes a waiver of that claim and shall preclude CONTRACTOR from raising such claim in any court or arbitration proceeding.

This Agreement entered into as of the day and year first written above.

Magnolia Educational & Research Foundation  
dba Magnolia Public Schools

Mesa Energy Systems, Inc.

\_\_\_\_\_  
President & CEO (Signature)

By: Alfredo Rubalcava  
Its: Chief Executive Officer &  
Superintendent

\_\_\_\_\_  
CONTRACTOR (Signature)

By: Harry Archung  
Its: Vice President  
611215  
\_\_\_\_\_  
License Number

**Form of TASK ORDER  
Exhibit A**

**Scope of Work and Schedule**

Facility: Magnolia Science Academy 8

Address: 6411 Orchard Ave, Bell, CA 90201

**Primary Contact for Site:** Patrick Ontiveros, Tel: (213) 628-3634; Email: [pontiveros@magnoliapublicschools.org](mailto:pontiveros@magnoliapublicschools.org)

Project Manager Name and Contact Info:

James Richmond, First Note Finance *inc*; Cell: (303) 517-8640; Email: [James@FirstNoteFinance.com](mailto:James@FirstNoteFinance.com)

Amanda Kielian, First Note Finance *inc*; Cell: (650) 534-8102; Email: [Amanda@FirstNoteFinance.com](mailto:Amanda@FirstNoteFinance.com)

**Project Manager Name and Contact Info for CONTRACTOR:**

Justin Davie, Tel: (949) 447-6044; Email: [jdavie@emcor.net](mailto:jdavie@emcor.net)

**Scope of Work Narrative:**

The Work is generally described as the construction work necessary to provide turnkey installation of twenty-two (22) programmable, networking thermostats. These replacement thermostats will wire directly to the existing units. The contractor includes a one (1) year warranty period, dated from date of Substantial Completion and meets requirements of the Los Angeles Unified School District.

Additionally, the kWh savings in the CEC approved plan for this scope is 4,180 kWh/year. The energy savings of the project shall be within 15% of 4,180 kWh/year.

Below is the proposed scope of work:

1. Check in with campus engineering.
2. Safe off units associated with thermostat replacement (22) total.
3. Remove existing thermostat and dispose off site.
4. Provide and install (22) new Capital Energy Systems TWC46 Thermostats.
5. Provide programming and support as dictated in scope below.
6. Start up units and verify operations.

#### **INITIAL SOFTWARE SETUP**

EMCOR will work with a district representative to perform the following initial software setup:

- This will include setting the operating mode, override time, In-session and out-of-session temperature set points, degrees of freedom, 365-day holiday calendar, In-session and out-of-session times for the week, and a fan program. All classrooms will be appropriately labeled with the names provided by the school, and we will set up the groups necessary to meet the needs of MSA 8 (Bell).

#### **INITIAL HARDWARE SETUP**

EMCOR will perform the following initial thermostat setup:

- EMCOR representative will preload twenty-seven (22) thermostats delivered to the school with the WiFi credentials and certificates specified by the IT department.
- EMCOR will replace the existing twenty-seven (22) thermostats with new Capital Energy System T stats.
- A technician representing EMCOR will be onsite during one day of installation to confirm connection to the districts WiFi network, proper wiring, and how to configure the thermostats for gas/electric or heat pump.
- After district installation is complete, EMCOR will verify each thermostat is connected to the districts wireless network, communicating properly with the online software, and configured for the HVAC unit to function properly.
- 2-months after district installation is complete, a representative from EMCOR will walk the campus to trouble shoot any issues, make sure the system is programed correctly to meet the district needs, go over run time minutes, and discuss ways to increase energy savings.
- 1-year of unlimited phone technical support and on-site visits when needed to resolve issues

#### **SOFTWARE UPGRADES**

All software upgrades and enhancements shall be included at no additional cost for the life of the EMS system.

The funding for this project and scope is dependent upon the availability of State Proposition 39 energy funding. The Prop-39 program requires that State funding be encumbered (that is, committed as evidenced by a signed contract) no later than June 30, 2019. If this Agreement is not executed by both parties by June 30, 2019, this Agreement will be null and void and of no further force or effect. Moreover, this Agreement is subject to the availability of public funding, and if the funding is subsequently determined to be unavailable, CONTRACTOR has no right to be compensated for equipment or supplies purchased, or for WORK performed under this Agreement. Therefore CONTRACTOR shall not purchase any equipment or supplies, or perform any WORK under this Agreement until a written, executed, NOTICE TO PROCEED is provided by Magnolia Science Academy. CONTRACTOR shall have no remedy at law or in equity as a consequence of having violated the foregoing provision. This Agreement will automatically terminate on March 15, 2020, if no NOTICE TO PROCEED is issued by Magnolia Science Academy.

Project Budget: \$ 26,040.00

The project budget includes all costs of all contractors, including mechanical, electrical, permits, materials, supplies, demolition... everything.

Product Cut Sheets:

A comprehensive set of project cut sheets will be submitted by CONTRACTOR. Please see link below for a comprehensive set of project cut sheets.

<https://www.dropbox.com/s/nq7c4f2tc3jv6wp/CES-TWC46-Spec-Sheet.pdf?dl=0>

**Exhibit B**

**Price and Payment Terms**

Fixed Turnkey Price: \$ 26,040.00

(This is the fixed turnkey price to be paid to CONTRACTOR for its completion of the Work, including all products, parts, materials, labor, travel expenses, permits and overhead.)

**Contingencies/Additional Services Budget: \$2,604.00**

A contingency amount of **\$2,604.00** to cover changes to cover unforeseen circumstances in the project.

**School Budget for LAUSD District Review Process: \$5,000.00**

The amount of \$5,000.00 will be reserved and paid by the school to LAUSD for their project approval review fees.

**Payment Terms:**

- One final invoice per the following Schedule of Values. Payment terms at net 15 days.
- Joint-party checks to ensure payment to equipment suppliers shall be indicated on Final Invoice. All material & equipment suppliers shall be identified, so joint-party checks can be issued.
- Unconditional Waiver and Release upon Final Payment (California Civil Code 8138) is required from all equipment suppliers and/or subcontractors for final payment.
- Unconditional Waiver and Release upon Final Payment (California Civil Code 8138) from the CONTRACTOR is required for final payment.

**Schedule of Values:**

| Project Milestone                             | % Completed | Amount       |
|---|-------------|--------------|
| Installation Complete, Warranty, & O&M Manual | 100%        | \$ 26,040.00 |

**Exhibit C**

**CA Department of Industrial Relations Prevailing Wage Reporting Form – PWC 100**

This project is funded in whole or in part using Proposition 39 State funding. This statute prohibits sole sourcing of contractors and requires registration with DIR as well as compliance with applicable Prevailing Wage law.

Please use your existing DIR login or register at:

DIR PWC 100 Log-in Site: <https://www.dir.ca.gov/pwc100ext/LoginPage.aspx>





Exhibit G

*MSA-8 LED Lighting – Contract with Vector Energy Group (\$74,812.16)*

## **AGREEMENT BETWEEN OWNER AND CONTRACTOR**

**A G R E E M E N T** made as of the 4th day of June, 2019.

**B E T W E E N** the Owner:

Magnolia Educational & Research Foundation dba  
Magnolia Public Schools  
17125 Victory Boulevard  
Van Nuys, CA 91406

and the Contractor:

Vector Energy Group  
17337 Ventura Blvd. Suite 304  
Encino, CA 91316  
Tel: (818) 600-4348

the Project is:

Magnolia Science Academy 8  
6411 Orchard Ave  
Bell, CA 90201

The Owner and Contractor agree as follows.

**ARTICLE 1 THE WORK OF THIS CONTRACT**

This Agreement entered into as of the day and year first written above.

The Contractor shall fully execute the Work described in the Contract Documents, described as follows:

The Work is generally described as the construction work necessary to perform a comprehensive, turnkey, LED Lighting Retrofit for all lighting fixtures, both Interior and Exterior fixtures, including all equipment and materials, installation labor, any sensors and controls necessary for permit or regulatory compliance, permitting, securing rebates, customer acceptance, and warranty.

A more detailed Scope of Work is provided by attaching a TASK ORDER (Exhibits “A”, “B”, and “C”) to this Contract, and the terms and conditions of the Task Order will take precedence.

**ARTICLE 2 RELATIONSHIP OF THE PARTIES**

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Owner and exercise the Contractor’s skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner’s interests. The Owner agrees to furnish and approve, in a timely manner, the information required by the Contractor to perform the Work and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

**ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

**3.1** The date of commencement of the Work shall be per a Notice to Proceed to be issued by the Owner.

**3.2** The Contractor shall have a reasonable period of time to complete this Project, consistent with the timing of the information provided by the Owner concerning the scope of work to be performed.

**ARTICLE 4 BASIS FOR PAYMENT**

**4.1 CONTRACT SUM**

4.1.1 The Owner shall pay the Contractor the Cost of the Work for the scope of work as defined in the Scope and Work Schedule attached hereto as TASK ORDER Exhibit “A” and the Fixed Turnkey Price attached hereto under as TASK ORDER Exhibit “B” Price and Payment Terms.

**ARTICLE 5**

**5.1 PROGRESS PAYMENTS**

5.1.1 The Contractor shall, once every month, deliver to the Owner an application for payment (“Application for Payment”) setting forth the amount which the Contractor believes it is entitled to be paid for the current period. Such Application for Payment shall be supported by such data substantiating the Contractor’s right to payment as the Owner may reasonably require including, without limitation, copies of invoices from Subcontractors and material suppliers, receipts and vouchers, a Prevailing Wage Report using the standard California Department of Industrial Relations form, attached hereto as TASK ORDER Exhibit “C”, and a conditional release of lien upon progress payment and a Conditional Release upon Progress Payment. Upon payment, Contractor shall supply Owner with an Unconditional Release of Lien upon Progress Payment.

5.1.2 The Owner will review each Application for Payment, and will pay the amount due within thirty (30) days after Owner’s receipt of the Application for Payment.

5.1.3 The Contractor shall promptly pay each Subcontractor upon receipt of payment out of the amount paid to the Contractor on account of each Subcontractor’s Work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such Subcontractor’s Work.

5.1.4 The Contractor agrees to keep the Work on the site(s) on which Work is to be performed or materials to be furnished pursuant to the Contract Documents free and clear of all mechanic’s liens and claims of liens, provided that the Owner has paid the Contractor the amount due for the labor, services and materials which are the subject of the lien.

## 5.2 FINAL PAYMENT

5.2.1 Upon receipt of written notice from the Contractor that the Work is complete and ready for final inspection, all corrections made, all reports and there is no other unfinished Work, and upon receipt of a final Application for Payment, including all completed and signed Prevailing Wage Reports using the standard California Department of Industrial Relations form, attached hereto as TASK ORDER Exhibit “C”, the Owner will promptly make such inspection and, when it finds the Work acceptable and the Contract fully performed, the Owner will promptly approve final payment.

5.2.2 Final payment, constituting the unpaid balance of the Contract Sum, if any, (subject to any retention with respect to minor work or defective work) shall be due and payable fifteen (15) days following the receipt of a final Application for Payment provided that as a condition to such payment the Owner has approved the Work, and Contractor has provided an Unconditional Release of Lien upon final payment for itself and all subcontractors or supplier.

5.2.3 If there should remain minor items to be completed, the Contractor and the Owner shall list such items and the Contractor shall deliver, in writing, its unconditional promise to complete said items within a reasonable time following substantial completion of the work. The Owner may retain an amount equal to one and one-half (1-1/2) times the cost to complete the minor work (“punch-list work”), as reasonably determined by Owner, until such time as the punch-list work is completed.

## **ARTICLE 6 THE CONTRACT DOCUMENTS**

**6.1** The Contract Documents consist of this Agreement Between Owner and Contractor, the bid set of Construction Documents, and the Contractor’s proposal attached as Exhibit “A”. The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Change Order. The Contract Documents shall not be construed to create a contractual relationship between the Owner and a Subcontractor or sub-subcontractor between any persons or entities other than the Owner and Contractor.

**6.2** The term “Work” means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor’s obligations. The Work may constitute the whole or a part of the Project.

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### **7.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

**7.1.1** The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

**7.1.2** The Owner shall pay for the building permit, other permits, governmental fees and charges required for the construction, use or occupancy of permanent structures or permanent changes in existing facilities.

### **7.2 OWNER’S RIGHT TO STOP THE WORK**

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### **7.3 OWNER’S RIGHT TO CARRY OUT THE WORK**

If the Contractor defaults or persistently fails or neglects to carry out the Work in accordance with the Contract Documents, or fails to perform a provision of the Contract, the Owner, after ten (10) days written notice to the Contractor and without prejudice to any other remedy the Owner may have, may make good such deficiencies and may deduct the reasonable cost thereof, from the payment then or thereafter due the Contractor.

## **ARTICLE 8 CONTRACTOR**

**8.1** The Contractor shall supervise and direct the Work, using the Contractor’s best skill and attention. The Contractor shall be solely responsible for and have control over construction

means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.

**8.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor’s employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

**8.3** The Contractor shall enforce strict discipline and good order among the Contractor’s employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

**8.4 WARRANTY**

8.4.1 The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. The Contractor’s warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear and normal usage.

8.4.2 Pursuant to the terms of this warranty, the Contractor shall promptly correct Work rejected by the Owner for failing to conform to the requirements of the Contract Documents if discovered within one year after the date of Substantial Completion of the Work, provided that the Owner gives the Contractor prompt written notice of the discovery of the condition. The Contractor shall correct it promptly after receipt of written notice from the Owner to do so.

**8.5 CLEANING UP**

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor’s tools, construction equipment, machinery and surplus material.

**ARTICLE 9 CHANGES IN THE WORK**

**9.1** The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner and Contractor or by a written Construction Change Directive signed by the Owner.

**ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

**10.1 SAFETY PRECAUTIONS AND PROGRAMS**

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- (1) employees on the Work and other persons who may be affected thereby;
- (2) the Work and materials and equipment to be incorporated therein; and
- (3) other property at the site or adjacent thereto.

The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible, except for damage or loss attributable to acts or omissions of the Owner, and not attributable to the fault or negligence of the Contractor.

**10.2 PROTECTION OF STUDENTS – WORK DURING SCHOOL HOURS**

10.2.1 Fingerprinting and Criminal Records Check of Contractor’s Employees.

Contractor shall comply with the provisions of Education Code §45125.1 regarding the submission of fingerprints to the California Department of Justice and the completion of criminal background investigations of the contractor and/or its employees.

Contractor shall not permit any employee to have any contact with school pupils until such time as Contractor has verified in writing to the Owner that such employee has not been convicted of a felony, as defined in Education Code §45125.1.

**ARTICLE 11 INSURANCE**

**11.1 CONTRACTOR’S LIABILITY INSURANCE**

11.1.1 The Contractor shall purchase and maintain such insurance as will protect him from claims set forth below which may arise out of or result from the Contractors operations under the Contract, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for shows acts any of them may be liable:

Workers Compensation and Employers Liability Insurance with limits of not less than required by law.

Commercial General Liability Insurance, (Insurance Services Office, Form CG 00 01 or equivalent), including

- Personal Injury, including accidental death, with limits of not less than One Million Dollar (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate;
- Property Damage, including Broad Form Property Damage Coverage, with limits of not less than One Million Dollars (\$1,000,00) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate;
- Products Liability/Completed Operations Liability, with limits of not less than One Million Dollars (\$1,000,000) in the aggregate; and
- Automobile Liability – One Million dollars (\$1,000,000) for bodily injury and property damage each accident limit.

Before commencing the Work, the Contractor shall furnish a) a certificate, satisfactory to Owner, from each insurance company showing that the above insurance is in force, stating policy numbers, dates of expiration, and limit of liability thereunder and b) a certificate naming Owner as an additional insured on a combination of a ISO form CG 20 37 and an ISO CG 20 10 10/01 form or its approved equivalent.

**ARTICLE 12 MISCELLANEOUS PROVISIONS**

**12.1 ASSIGNMENT OF CONTRACT**

Neither party to the Contract shall assign the Contract without written consent of the other.

**12.2 GOVERNING LAW**

The Contract shall be governed by the laws of the State of California.

**12.3 TESTS AND INSPECTIONS**

Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority. The Owner shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures.

**ARTICLE 13 INDEMNIFICATION**

**13.1** To the fullest extent permitted by law, Contractor agrees to indemnify, hold harmless and defend Owner and its Officers, Agents and Employees from and against any and all claims, losses, damages, liability including defects in the work arising out of the negligent acts, errors or omissions and/or breaches of this agreement except to the extent caused by the active or sole negligence, or willful misconduct of the Owner.



**ARTICLE 14        DISPUTES**

**14.1** All disputes not settled by negotiation or mediation shall be resolved by resort to such rights and remedies as the parties each may have at law or in equity. Except to the extent that this AGREEMENT expressly permits a party to suspend performance, pending final resolution of a dispute, the parties shall each proceed diligently and faithfully with performance of their respective obligations under this AGREEMENT. CONTRACTOR acknowledges and agrees that, should a dispute proceed pursuant to this Section, the only issues that the CONTRACTOR may raise in such proceedings are those that were specifically included in its written claim submitted in accordance with this AGREEMENT, as applicable to the type of WORK. Failure to specifically describe an issue in the written claim within 10 days constitutes a waiver of that claim and shall preclude CONTRACTOR from raising such claim in any court or arbitration proceeding.

This Agreement entered into as of the day and year first written above.

Magnolia Educational & Research  
Foundation dba Magnolia Public Schools

Vector Energy Group

\_\_\_\_\_  
President & CEO (Signature)

\_\_\_\_\_  
CONTRACTOR (Signature)

By: Alfredo Rubalcava  
Its: Chief Executive Officer &  
Superintendent

By: Al Gancman  
Its: President  
License Number: 988062

**TASK ORDER**  
**Exhibit A**

**Scope of Work and Schedule**

Facility: Magnolia Science Academy 8

Address: 6411 Orchard Ave, Bell, CA 90201

**Primary Contact for Site:** Patrick Ontiveros, Tel: (213) 628-3634; Email:  
[pontiveros@magnoliapublicschools.org](mailto:pontiveros@magnoliapublicschools.org)

Project Manager Name and Contact Info:

James Richmond, First Note Finance *inc*; Cell: (303) 517-8640; Email:  
[James@FirstNoteFinance.com](mailto:James@FirstNoteFinance.com)

Amanda Kielian, First Note Finance *inc*; Cell: (650) 534-8102; Email:  
[Amanda@FirstNoteFinance.com](mailto:Amanda@FirstNoteFinance.com)

**Project Manager Name and Contact Info for CONTRACTOR:**

Al Gancman, Vector Energy Group, Tel: (818) 600-4348, Email:  
[agancman@vectorenergygroup.com](mailto:agancman@vectorenergygroup.com)

**Scope of Work Narrative:**

CONTRACTOR shall perform a comprehensive, turnkey, LED Lighting Retrofit for all lighting fixtures, both Interior and Exterior, including all equipment and materials, installation labor, any sensors and controls necessary for permit or regulatory compliance, permitting, securing rebates, customer acceptance, and warranty. CONTRACTOR shall perform its own site survey and provide Owner with a scope and price proposal prior to executing this contract. The site survey shall be of sufficient detail to capture in advance any potential change orders, including but not limited to emergency lighting, battery backups, product compatibility with compact fluorescent ballasts, occupancy sensor integration, and/or product voltage compatibility. The annual kWh energy savings of the CONTRACTOR proposed systems shall be within 15% of the calculated energy savings of 83,063 kWh in order to adhere to the CA Proposition 39 funding guidelines. For fluorescent tube fixture retrofits, the Owner's preference is a line-voltage LED replacement where the fluorescent ballasts are removed. CONTRACTOR shall prepare and submit rebate applications and assist Owner with collection of the rebates, even after the on-site work is complete and accepted.

This installation includes sensors in every classroom and office as well as 1 emergency fixture per classroom.

The funding for this project and scope is dependent upon the availability of State Proposition 39 energy funding. The Prop-39 program requires that State funding be encumbered (that is, committed as evidenced by a signed contract) no later than June 30, 2019. If this Agreement is not executed by both parties by June 30, 2019, this Agreement will be null and void and of no further force or effect. Moreover, this Agreement is subject to the availability of public funding, and if the funding is subsequently determined to be unavailable, CONTRACTOR has no right to be compensated for equipment or supplies purchased, or for WORK performed under this Agreement. Therefore CONTRACTOR shall not purchase any equipment or supplies, or perform any WORK under this Agreement until a written, executed, NOTICE TO PROCEED is provided by Magnolia Science Academy. CONTRACTOR shall have no remedy at law or in equity as a consequence of having violated the foregoing provision. This Agreement will automatically terminate on March 15, 2020, if no NOTICE TO PROCEED is issued by Magnolia Science Academy.

**Bill of Materials:**



24-May-19

| <b>MSA 8 - BILL OF MATERIALS</b>                      |                 |              |
|---|-----------------|--------------|
| <b>VECTOR RETROFIT</b>                                | <b>Fixtures</b> | <b>Units</b> |
| PHILIPS 12T8/PRO/48-840/IF18/G 10/1 FB PNP            | 11              | 22           |
| PHILIPS 16A21/PER/840/P/E26/DIM 6/1 FB                | 52              | 52           |
| PHILIPS 12PLC/32H/V/840/IF/4P/DIM/ 1/PK 10/1 - HORIZ  | 137             | 137          |
| PHILIPS 12PLC/32H/V/840/IF/4P/DIM/ 1/PK 10/1 VERTICAL | 38              | 304          |
| PHILIPS 150HB/LED/740/ND WB DL BB 2/1                 | 6               | 42           |
| PHILIPS 25T5HO/COR/46-840/MF35/G 25/1 BYPASS          | 59              | 118          |
| PHILIPS 75HB/LED/840/ND FB 4/1                        | 28              | 56           |
| PHILLIPS 14T8PRO/48-840/BB18/G 10/1 FB BYPASS         | 551             | 1037         |
|   | <b>882</b>      | <b>1764</b>  |

**Project Budget: \$ 74,812.16**

(The PROJECT MANAGER will provide a dollar amount which is the maximum project budget here. This is the maximum amount of project funding secured through the Proposition 39 application.)

**Tabular Listing of the Work to be Performed:**

|  |                    |
|--|--------------------|
| Interior: Line Voltage LED Tubes:      | \$37,092.75        |
| Interior: LED Bulbs:                   | \$ 7,643.80        |
| Exterior: LED Retrofit:                | \$18,566.93        |
| Interior: Lighting Occupancy Controls: | <u>\$10,698.67</u> |
| <b>Total LED Retrofit:</b>             | <b>\$74,812.16</b> |

**Schedule:** The LED lighting project is requested to be undertaken during after regular school hours as soon as possible as determined by school client.

**Product Cut Sheets:**

A comprehensive set of project cut sheets will be submitted by CONTRACTOR and included here by reference attachment.

The link name is

**<https://www.dropbox.com/s/yxpq0c3vctm9kdo/Vector%20cut%20sheets.pdf?dl=0>**

**Exhibit B**

**Price and Payment Terms**

**Fixed Turnkey Price: \$74,812.16**

(This is the fixed turnkey price to be paid to CONTRACTOR for its completion of the Work, including all products, parts, materials, labor, travel expenses, permits and overhead. CONTRACTOR’s price shall be in conformance with its bid that it submitted with the RFQ.)

**Add Alternate (Option B): \$101,372.00**

A Hybrid Approach combining Line Voltage and New Fixture Retrofit options is available as an add alternate for an additional \$101,372.00. Magnolia will indicate whether the add-alternate approach is accepted if/when it issues its Notice to Proceed.

**Contingencies/Additional Services Budget: \$7,481.00**

A contingency amount of \$7,481.00 to cover changes to cover unforeseen circumstances in the project.

**School Budget for LAUSD District Review Process: \$5,000.00**

The amount of \$5,000.00 will be reserved and paid by the school to LAUSD for their project approval review fees.

**Payment Terms:**

- One final invoice per the following Schedule of Values. Payment terms at net 15 days.
- Joint-party checks to ensure payment to equipment suppliers shall be indicated on Final Invoice. All material & equipment suppliers shall be identified, so joint-party checks can be issued.
- Unconditional Waiver and Release upon Final Payment (California Civil Code 8138) is required from all equipment suppliers and/or subcontractors for final payment.
- Unconditional Waiver and Release upon Final Payment (California Civil Code 8138) from the CONTRACTOR is required for final payment.

**Schedule of Values:**

| Project Milestone                             | % Completed | Amount      |
|---|-------------|-------------|
| Installation Complete, Warranty, & O&M Manual | 100%        | \$74,812.16 |

EXHIBIT A

Bid Form & Schedule of Values for OPTION A - LINE VOLTAGE LED LAMP RETROFIT APPROACH

DATE 5/8/2019 COMPANY VECTOR ENERGY GROUP, LLC EMAIL agancman@vectorenergygroup.com

NAME AL GANCMAN, PRESIDENT TELEPHONE 310-991-2017

**MAGNOLIA SCIENCE ACADEMY 8**

|                                  |  | PRICE OF                                       |                            |                                |                       | TOTAL               | SCHEDULE OF VALUES (5) | ESTIMATED REBATES (6) | PAYER OF REBATES (7) |
|----------------------------------|--|--|----------------------------|--------------------------------|-----------------------|---------------------|------------------------|-----------------------|----------------------|
|                                  |  | INTERIOR FLUORESCENT TUBE FIXTURE RETROFIT (1) | INTERIOR BULB RETROFIT (2) | INTERIOR LIGHTING RETROFIT (3) | OCCUPANCY SENSORS (4) |                     |                        |                       |                      |
| <b>OPTION A</b>                  | <b>LINE VOLTAGE LAMP RETROFIT APPROACH</b>                             |  |                            |                                |                       |                     |                        |                       |                      |
| 1                                | MAGNOLIA SCIENCE ACADEMY 8 LIGHTING PRODUCTS                           | \$ 19,948.72                                   | \$ 5,370.76                | \$ 12,793.39                   | \$ 6,581.50           | \$ 44,694.38        | 60%                    | \$ -                  | SCE                  |
| 2                                | MAGNOLIA SCIENCE ACADEMY 8 INSTALLATION LABOR, LAMP & BALLAST DISPOSAL | \$ 17,954.03                                   | \$ 2,273.04                | \$ 5,773.54                    | \$ 4,117.17           | \$ 30,117.78        | 40%                    |                       |                      |
| 3                                | MAGNOLIA SCIENCE ACADEMY 8 COST OF PERMITS AND INSPECTIONS             |  |                            |                                |                       |                     |                        |                       |                      |
| <b>TOTAL TURNKEY FIXED PRICE</b> |  | <b>\$ 37,902.75</b>                            | <b>\$ 7,643.80</b>         | <b>\$ 18,566.93</b>            | <b>\$ 10,698.67</b>   | <b>\$ 74,812.16</b> | <b>100%</b>            |                       |                      |

Please list the DLC product numbers for the lighting products included in option A - Line Voltage LED Lamp Retrofit Approach table above

| DLC Number    | Model Number               | Product Description and Lamp or Fixture Lumens | INCLUDES INTEGRATED AREA CONTROLS OR OCCUPANCY SENSING? (YES / NO) | INCLUDES INTEGRATED DIMMING CONTROLS? (YES / NO) | PRODUCT CUT SHEET PROVIDED WITH BID? (YES / NO) |
|---------------|----------------------------|--|--|--|---|
| PLYX19CCA05U  | LED12T8/148/FG/B41/SUB/B/F | 4' LINEAR T8 12w BYPASS                        | NO   | NO   | YES   |
| P3MSKVQ3      | HV-V-G24Q-B-11W-840-G4     | 11W 4 PIN LED LAMP                             | NO   | NO   | YES   |
| P4ZNIOTD      | T5-25-48G-840-BYP          | 25W T5 BYPASS                                  | NO   | NO   | YES   |
| ENERGY STAR   | SKPT50LEDU30E39            | 50W CORN COB                                   | NO   | NO   | YES   |
| ENERGY STAR   | SKPT300LEDU30E39           | 50W CORN COB                                   | NO   | NO   | YES   |
| ENERGY STAR   | LED10A19/DIM/O/940/U/B     | 10W LED A LAMP                                 | NO   | NO   | YES   |
| ACUITY SENSOR | CM-PDT-9                   | ACUITY CEILING SENSOR                          | NO   | NO   | YES   |
| POWER PACK    | PP20                       | POWER PACK                                     | NO   | NO   | YES   |

I, Al Gancman, am qualified to make this bid offer commitment on behalf of my company. The fixed, turnkey price provided is all-inclusive. I understand that this bid is provided to the client without expectation for compensation of any kind for the cost of preparing it, and that the Client (Magnolia Science Academy 8), or its designated Energy Manager (First Note Finance Inc) may reject this bid if it is not responsive, complete or submitted in time.

**Exhibit C**

**CA Department of Industrial Relations Prevailing Wage Reporting Form – PWC 100**

This project is funded in whole or in part using Proposition 39 State funding. This statute prohibits sole sourcing of contractors and requires registration with DIR as well as compliance with applicable Prevailing Wage law.

Please use your existing DIR login or register at:

DIR PWC 100 Log-in Site: <https://www.dir.ca.gov/pwc100ext/LoginPage.aspx>