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| <b>Board Agenda Item #:</b> | IV C – Action Item  |
| <b>Date:</b>                | December 15, 2019   |
| <b>To:</b>                  | Magnolia Educational & Research Foundation dba Magnolia Public Schools (“ <b>MPS</b> ”) Board of Directors (the “ <b>Board</b> ”) |
| <b>From:</b>                | Alfredo Rubalcava, CEO & Superintendent   |
| <b>Staff Lead:</b>          | Patrick Ontiveros, General Counsel & Director of Facilities   |
| <b>RE:</b>                  | Extension of Independent Contractor Agreement for Facilities Projects   |

## I. Proposed Recommendation

Staff recommends and moves that the Board approve an amendment to the Independent Contractor Agreement by and between MPS and Noflin Enterprises for two (2) more months, commencing December 24, 2019 and expiring on February 23, 2019 according to the terms and conditions set forth in this report and any attached exhibits.

## II. Background

At the March 21, 2019 regular meeting of the Board, the Board approved the MPS Facilities Department to hire a full time employee on a six (6) month probationary basis to assist with facilities related matters. Such additional employee was needed in order to provide assistance to the Director of Facilities, the sole Facilities Department employee, to help close out bond financed capital projects, help complete Proposition 39 energy upgrade projects at various MPS campuses, and such other projects as may be needed. MPS Staff subsequently advertised the position and reviewed multiple applicants. None of the proposed applicants possessed sufficient experience to immediately make a contribution upon joining MPS. Consequently, in the 2019-20 fiscal year budget, the Facilities Department included a budget line item for an independent contractor.

Seeing the need for someone with experience to assist with facilities projects and understanding the time sensitive nature of such projects, then Board member Charlotte Brimmer offered to resign from the Board to work on such projects as an independent contractor under the supervision of the Director of Facilities.



Noflin Enterprises, an affiliated company to Ms. Brimmer, and MPS signed an independent contractor agreement as of July 27, 2019. The term of the Agreement was for three months and expired on October 23, 2019. During that term Noflin undertook supervision of all Prop 39 energy upgrade projects, certain capital improvement projects at MSA-7, and dispute resolution with a neighbor to MSA-1. Noflin was paid a total of TWELVE THOUSAND AND NO /100 DOLLARS (\$12,000.00) for the three months.

Mutually satisfied with the results from the independent contractor arrangement and with MPS seeing a need for continued assistance, Noflin and MPS agreed to extend the term for another two months. MPS paid Noflin TWELVE THOUSAND TWO HUNDRED SIXTY SIX AND NO/100 DOLLARS (\$12,266.00) for the second two (2) months of the extended term. The extended term expires on December 24, 2019. During the extended term Noflin continued to supervise the Prop 39 projects and undertook to close out the MSA-San Diego project. The MSA-San Diego project was financed with the proceeds of the 2017 bond issuance and must be closed out with the Division of State Architect ("DSA").

MPS Staff desires to further extend Noflin's contract for another two (2) months at TWELVE THOUSAND TWO HUNDRED SIXTY SIX AND NO/100 DOLLARS (\$12,266.00) for said two (2) months in order to complete the close out of the MSA-San Diego project, to assist with certain matters at MSA-Santa Ana (the gym construction of which was financed by the 2017 bond), and to continue to supervise all Prop 39 projects. This second extension will put the dollar amount of the contract, as extended, over the threshold of TWENTY FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00) thus triggering the Board's required approval.

The executed original agreement is attached as Exhibit A, the executed first amendment is attached as Exhibit B, and the proposed second amendment is attached as Exhibit C.

### **III. Budget Impacts**

The 2019-20 Facilities Department budget included \$25,000 to pay for an independent contractor. The proposed extension of the Noflin contract will be paid from MERF's long term reserves.

Attachments  
Exhibits A, B and C



## Exhibit A

# Independent Contractor Agreement

## FIRST AMENDMENT TO INDEPENDENT CONTRACTOR AGREEMENT

THIS SECOND AMENDMENT TO INDEPENDENT CONTRACTOR AGREEMENT (this "**First Amendment**") is entered into as of December 24, 2019 (the "**Effective Date**"), by and between Magnolia Educational & Research Foundation dba Magnolia Public Schools ("**Client**") and Noflin Enterprises ("**Independent Contractor**"). Client and Independent Contractor shall be referred to individually as a "**Party**" and together as the "**Parties.**"

### RECITALS

**A.** The Parties entered into that certain Independent Contractor Agreement as of July 24, 2019 (the "**Original Agreement**") for the Project (as defined in the Original Agreement") pursuant to which Independent Contractor agreed to provide professional services to Client.

**B.** The Parties entered into that certain First Amendment to Independent Contractor Agreement as of October 24, 2019 (the "**First Amendment**") to extend the Term of the Original Agreement and amend the scope of work.

**C.** The Term of the Original Agreement, as amended by the First Amendment ,expires as of December 23, 2019. The Original Agreement and the First Amendment are sometimes herein referred to together as the "**Agreement.**"

**D.** The Parties desire to amend the Agreement to extend the Term as of the Effective Date as set forth in this Second Amendment and amend the scope of work under the Agreement.

### AGREEMENT

**NOW, THEREFORE**, in reliance on the preceding recitals, and in consideration of the promises, covenants and agreements set forth in the Agreement and this Second Amendment and such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby agree as follows:

**1.** Defined Terms. Initially capitalized terms used but not otherwise defined in this Second Amendment shall have the meanings assigned to such terms in the Agreement.

**2.** Recitals. The Parties acknowledge that the above recitals are true and correct and that the Agreement remains in full force and effect.

**3.** Amendments. The following Sections and/or subsections of the Agreement are amended as hereinafter set forth as of the date of this Second Amendment.

a. Section 1.2 ("Term") is amended as follows to extend the duration of the Term:

*The initial term of Independent Contractor's engagement commenced as of July 25, 2019 and terminated as of October 23, 2019. The Independent Contractor's engagement shall continue, subject to earlier termination or extension as provided below, until February 23, 2019.*

b. Section 3.1 ("Calculation of Fee") is amended as follows to increase the Fee for the extended duration of the Term:

*As compensation for services rendered under this Agreement by Independent Contractor, Client shall pay Independent Contractor an amount not to exceed TWELVE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$12,500.00) for the first three (3) months and TWENTY FOUR THOUSAND FIVE HUNDRED THIRTY TWO AND NO/100 DOLLARS (\$24,532.00) for the second four (4) months of the Term.*

c. The first sentence of Section 3.2 ("Payment Schedule") is amended as follows:

*The Fee shall be paid in arrears as follows: in two (3) equal installments of FOUR THOUSAND ONE HUNDRED SIXTY SIX AND 67/100 DOLLARS (\$4,166.67) for the first three (3) months and in four (4) equal installments of SIX THOUSAND ONE HUNDRED THIRTY THREE AND NO/100 DOLLARS (\$6,133.00) for the second four (4) months, commencing on the thirtieth (30) day following the commencement date and every thirty (30) days thereafter.*

d. Exhibits A and B are amended and restated as Exhibits A and B attached hereto.

**4** Execution. This Second Amendment may be executed in multiple counterparts each of which shall be an original, but all of such counterparts shall constitute one such Second Amendment. Each Party shall be entitled to rely upon an electronically delivered counterpart of this Second Amendment executed by the other Party with the same force and effect as if such electronic copy were an ink-signed original signed by the party sending such electronic copy and delivered to the other party. For purposes of this Section, all references to the term "electronic copy" shall be deemed to include a document forwarded by telecopy transmission or a document forwarded by electronic mail as a Portable Document Format (Adobe Acrobat) (also known as a PDF) attachment to such electronic mail.

**5.** Conflict; Reaffirmation. Except as modified herein, all terms and provisions of the Agreement remain in full force and effect. If there is a conflict between the terms of the Agreement and the terms of this Second Amendment, the terms of this Second Amendment shall control. The Agreement, as amended hereby, is hereby affirmed, and the provisions thereof, as so amended, shall remain in full force and effect. The Agreement, as modified herein, constitutes the entire agreement between the Parties hereto with respect to the subject matter thereof, and no further modification of the Agreement will be binding unless evidenced by an agreement in writing signed by both Client and Independent Contractor.

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IN WITNESS WHEREOF, the Parties hereto have executed this Second Amendment as of the date first set forth above.

**CLIENT:**

MAGNOLIA EDUCATIONAL & RESEARCH  
FOUNDAITON DBA MAGNOLIA PUBLIC  
SCHOOLS

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

Name: Alfredo Rubalcava

Title: CEO & Superintendent

**INDEPENDENT CONTRACTOR:**

NOFLIN ENTERPRISES

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

Name: David Noflin

Title: Authorized Signatory

## EXHIBIT A

### Description of Projects

The Projects are defined as construction or capital improvement projects at certain of Client's ten (10) school locations that Independent Contractor agrees to undertake under this Agreement. The Projects for the extended term shall include the following:

- Client's Prop 39 Clean Energy Jobs Act grant ("Prop 39") energy upgrade projects
- The Close-Out of Client's project at MSA-San Diego
- Certain discreet tasks associated with Client's MSA-Santa Ana school
- Such other projects as Client and Independent Contractor shall mutually agree upon

## **EXHIBIT B**

### **Scope of Services**

The Scope of Services to be provided under this Agreement initially are as follows and shall include all related services necessary for the successful completion of said projects:

#### *Prop 39 Clean Energy Jobs Act grant (“Prop 39”) energy upgrade projects*

- Supervise First Note Finance inc. in the implementation of all outstanding Prop 39 projects
- Assure collection of appropriate paperwork to meet State of California requirements (including prevailing wage requirements) as well as close out documentation, including but not limited to collection of all lien releases, operational manuals and instructions, and warranties. Present such materials to Client in a coherent and logical manner for storage and later use by Client.
- Where a particular Prop 39 project is on a co-located on a Los Angeles Unified School District site, assist FNF with securing LAUSD approvals to allow the Prop 39 project to be completed

#### *Close Out of New Construction Project at Magnolia Science Academy – San Diego*

- Coordinate with the Architect of Record (“AOR”) and Inspector of Record (“IOR”) to determine what scope of work is still outstanding in order to close the project with the Division of State Architect (“DSA”)
- Identify appropriate vendors to complete any outstanding scopes of work
- Coordinate with the AOR and IOR to submit any and all documentation required to close the project out with the DSA
- Identify any utility funded or low cost shade structure options with solar panels. Present the same to Client and the MSA-San Diego principal and staff.

#### *Magnolia Science Academy – Santa Ana Facility Improvements*

- Coordinate with the City of Santa Ana or such other municipal agencies, as necessary, the installation of school zone and other appropriate signage or improvements as required for the school's operation
- Such other facilities related matters as Client and Independent Contractor may agree upon





## Exhibit B

# First Amendment to Independent Contractor Agreement

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### RECITALS

**A.** The Parties entered into that certain Independent Contractor Agreement as of July 24, 2019 (the "**Original Agreement**") for the Project (as defined in the Original Agreement") pursuant to which Independent Contractor agreed to provide professional services to Client.

**B.** The Term of the Original Agreement expires as of October 23, 2019 and the Parties desire to amend the Original Agreement to extend the Term as of the Effective Date as set forth in this First Amendment.

### AGREEMENT

**NOW, THEREFORE**, in reliance on the preceding recitals, and in consideration of the promises, covenants and agreements set forth in the Original Agreement and this First Amendment and such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby agree as follows:

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Name: Alfredo Rubalcava  
Title: CEO & Superintendent

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