



Board Agenda Item #:	IV C- Action Item
Date:	February 13, 2020
To:	Magnolia Educational & Research Foundation dba Magnolia Public Schools (“ MPS ”) Board of Directors (the “ Board ”)
From:	Alfredo Rubalcava, CEO & Superintendent
Staff Lead:	Patrick Ontiveros, General Counsel & Director of Facilities
RE:	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 one (1) more month, commencing February 24, 2020 and expiring on March 23, 2020 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.

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 expired 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"). With the Board's approval, the Noflin contract was extended for another two (2) months for a total of TWELVE THOUSAND TWO HUNDRED SIXTY SIX AND NO/100 DOLLARS (\$12,266.00).

MPS Staff desires to further extend Noflin's contract for another one (1) month period at SIX THOUSAND ONE HUNDRED THIRTY THREE AND NO/100 DOLLARS (\$6,133.00) for said one (1) month 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..

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

III. Budget Impacts

The proposed extension of the Noflin contract will be paid from the Facilities Department's operating budget.

Attachments
Exhibits A, B, C and D



Exhibit A

Independent Contractor Agreement

INDEPENDENT CONTRACTOR AGREEMENT

This Independent Contractor Agreement (this "Agreement") is entered into as of July 24, 2019 (the "Effective Date") by and between Magnolia Educational & Research Foundation dba Magnolia Public Schools ("Client"), and Noflin Enterprises ("Independent Contractor"), for professional services in connection with the projects described on Exhibit A (each a "Project" and collectively the "Projects").

RECITALS

A. Client's is in the business of education and is the operator of ten (10) public charter schools in Los Angeles, Orange and San Diego Counties.

B. Client is in need of the services of someone to assist its Facilities Department with discreet facilities related projects.

C. Independent Contractor has a background in construction and related disciplines and is willing to provide the services described in this Agreement and has a separate business providing consulting services similar to the services to be provided under this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, stipulated and agreed, the parties agree as follows:

AGREEMENT

1. ENGAGEMENT AND SERVICES.

1.1. **Services.** Client hereby agrees to retain Independent Contractor to provide, and Independent Contractor agrees to provide the services described in attached Exhibit B (the "Services"). Independent Contractor shall provide sufficient organization and management to perform such services in an expeditious and economical manner consistent with the interests of Client.

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

1.3. **Changes to Services.** Client may not make any changes to the Services, including additions, deletions, or revisions to its scope nor extend its duration without Independent Contractor's prior written consent, which consent may be withheld in Independent Contractor's absolute and sole discretion. If Client and Independent Contractor agree to make any changes to the Agreement that result in a material increase in the scope or duration of the Services, there shall be an equitable adjustment to Independent Contractor's compensation and the term of the Agreement to be reasonably agreed to by the parties.

1.4. **Termination.** Either party may terminate this Agreement upon five (5) days written notice to the other party. In the event of termination either according to Section 1.2 or by written notice according to the preceding sentence, Independent Contractor shall deliver to Client all materials relating to the Project received by Independent Contractor from Client or received from third parties at the direction of Client. Independent Contractor shall also deliver to Client any materials generated by Independent Contract in the delivery of the Services under this Agreement and any supplies that may have been loaned to Independent Contractor by Client in order to perform the Services.

1.5. **Certification.** Independent Contractor represents and warrants that it has a background in construction and in particular has a background in prevailing wage requirements under State of California and Federal

law. Independent Contractor covenants that it shall obtain such clearances as Client may reasonably request including but not limited to (i) evidence from a licensed physician and or entity that any person acting for on behalf of Independent Contractor is free from active tuberculosis, (ii) fingerprint clearance through the California Department of Justice (aka Live Scan); and (iii) a business license from the appropriate municipal entity. The foregoing items (i) and (ii) are required to be submitted before Independent Contractor may commence work under this Agreement.

2. INDEPENDENT CONTRACTOR AND CLIENT RESPONSIBILITIES.

2.1 Independent Contractor Responsibility. Independent Contractor shall perform the Services in a professional, and timely manner.

2.2 Client Responsibility.

(a) Client shall be responsible for (i) providing Independent Contractor access to the Properties at a mutually agreed upon date and time, and (ii) providing Independent Contractor with such plans or documents as may be in its possession to aid Independent Contractor in completing the Services.

(b) Client shall be responsible for paying all invoices for the Project in a timely manner and before such invoices become past due.

(c) Client shall provide to Independent Contractor full information regarding the Property and designate a representative who shall be fully acquainted with the Project and have authority to approve matters requiring Client's approval and to render decisions promptly. Client's representative for the Project is Patrick Ontiveros.

3. FEE.

3.1 Calculation of Fee. 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 DOLLARS (\$12,500.00) (the "Fee") for three months.

3.2 Payment Schedule. The Fee shall be paid in arrears in three (3) equal installments of FOUR THOUSAND ONE HUNDRED SIXTY SIX AND 67/100 DOLLARS (\$4,166.67) commencing on the thirtieth (30) day following the commencement date and thirty (30) days thereafter. Independent Contractor shall submit an invoice for such payment at least ten (10) days before the due date. Payment shall be deemed late if paid after the tenth (10th) day following the due date and shall accrue interest at the rate of ten percent (10%) per annum for so long as such amount remains unpaid. On each payment date, Independent Contractor shall deliver to Client a description of the work performed and the amount of any requested reimbursable expenses with sufficient description and back up for such reimbursable costs. Such costs will be reimbursed on the next succeeding payment date. Because of Independent Contractor's status as an independent contractor, Client shall make no withholdings from payments to Independent Contractor and Independent Contractor is solely responsible for paying all applicable fees and taxes to appropriate State and Federal authorities.

4. REIMBURSABLE COSTS. Client shall reimburse Independent Contractor for all its reasonable pre-approved out-of-pocket expenses incurred in connection with the Project. Independent Contractor shall provide written support and commercially reasonable proof of such expenditures provided that Independent Contractor has sought approval for such expenses in advance. Such payment shall be in addition to Independent Contractor's Fee.

5. INDEPENDENT CONTRACTOR.

5.1 Status. Independent Contractor is an independent contractor of Client and shall not perform the Services under this Agreement as an employee of Client. Client shall have no right to control or direct the method,

details or means by which Independent Contractor performs the Services required under this Agreement. Independent Contractor shall have no authority to enter into any contract or incur any liability or obligation on behalf of Client without the prior written approval of Client.

5.2 Compliance. Independent Contractor assumes full responsibility for the payment of all taxes pertaining to services rendered and compensation paid under this Agreement. Independent Contractor further assumes full responsibility for compliance with any and all applicable worker's compensation insurance or similar laws pertaining to services rendered and compensation paid under this Agreement.

6. INSURANCE AND INDEMNITY.

6.1 Client's Liability Insurance. Client shall maintain insurance policies for commercial general liability insurance, professional liability (errors and omissions), and such other insurance for the Project as will protect Client and Independent Contractor against claims which may arise from the Project and/or this Agreement. Independent Contractor may, at its option, maintain such insurance policies as it deems necessary to protect itself from liability.

6.2 Indemnification.

(a) Mutual Indemnification. Independent Contractor will indemnify, defend, and hold harmless Client (its directors, agents, officers, and employees) from and against any and all claims, demands, liabilities, causes of action, costs and expenses (including reasonable attorney's fees and costs), asserted against Client (or its agents, officers, and employees) to the extent any such claim arises from or out of the negligence or intentional misconduct of Independent Contractor or Independent Contractor's default under this Agreement. Client will indemnify, defend, and hold Independent Contractor (and its directors, agents, officers, and employees) harmless from and against any and all claims, demands, liabilities, causes of action, costs and expenses (including reasonable attorney's fees and costs), asserted against Independent Contractor (or its agents, officers, and employees) and relating in any manner to the Project, except to the extent any such claim arises from or out of the negligence or intentional misconduct of Development Manager or its, employees, officers, or agents, or Independent Contractor's default under this Agreement.

(b) Concurrent Negligence. If any losses, liabilities, claims, or damages covered by either party's indemnity are caused by the concurrent negligence of both Independent Contractor and Client, or their respective agents, officers or employees, then the indemnifying party shall indemnify the other only to the extent of the indemnifying party's own negligence or that of its agents, beneficiaries, representatives or employees.

7. DISPUTE RESOLUTION.

7.1 Available Remedies. Except as expressly provided below, any controversy, claim or dispute between or among the parties hereto relating to this Agreement or any related agreements or instruments (including any claim based on or arising from an alleged personal injury or business tort) shall be resolved in accordance with the procedures in this Section 11. Any party to this Agreement may bring an action, including a summary or expedited proceeding, to compel arbitration of any controversy, claim or dispute in any court having jurisdiction over such action. Nothing in this Section 11 shall prevent a party from seeking injunctive relief in a court of competent jurisdiction.

7.2 Dispute Resolution Procedure. The party raising the dispute shall provide Notice to the other party of the dispute. The parties shall first meet and confer in good faith to fairly and equitably resolve the dispute. Such meeting shall occur within five (5) business days of the date of the Notice given pursuant to this Section 7.2) implementing this dispute resolution process. If the parties cannot resolve the issue within five (5) business days of the foregoing meeting, then the dispute shall be mediated using a mediator from the Los Angeles office of the American Arbitration Association ("AAA") or if AAA fails or declines to serve, such other similar arbitration or mediation service or organization as agreed to by the parties (collectively the "Arbitration Service"). The mediation shall take place in Los

Angeles, California unless otherwise agreed to in writing by the parties. If following such mediation, the parties have still not resolved the matter, then the matter shall be submitted to arbitration pursuant to Section 11(c) below.

7.3 Arbitration. The arbitration shall be conducted by a single arbitrator who shall be someone other than the mediator who served under Section 7.2 above. The arbitrator shall be selected by the parties from the Arbitration Service's panel of arbitrators, or if the parties have not agreed on the arbitrator within ten (10) business days after a party notifies the other party of its election to submit a matter to Arbitration, the arbitrator shall be selected at the request of either party by the then chief officer of the Arbitration Service office in Los Angeles, California. The Arbitration shall occur no later than twenty (20) days after the arbitrator has been selected and must be concluded within thirty (30) days thereafter with any hearing to last no more than two (2) full hearing days with one (1) day allotted to each party. Only written discovery shall be permitted and written submissions shall be limited to ten (10) pages. The arbitrator shall be bound to follow the applicable federal and state laws and regulations in deciding all issues and in rendering any award. The Arbitration proceedings shall be binding, conclusive and not appealable and any party to any award rendered in any such arbitration proceeding shall be entitled to have judgment entered thereon. The arbitrator shall determine the "prevailing party" and such party shall be entitled to its reasonable attorneys' fees and costs which shall be part of the award. The arbitration shall take place in Los Angeles, California unless otherwise agreed in writing by the parties. In no event, however, shall mediation or arbitration be available pursuant to Section 7.2 and this Section 7.3 after the date when institution of legal or equitable proceedings based on such claim, dispute, or other matter in question would be barred by any applicable statute of limitations.

7.4 Continuation of Services During Dispute Resolution. Unless otherwise agreed in writing, Independent Contractor shall continue to provide the Services stated in this Agreement so long as Client continues to make payments in accordance with this Agreement during mediation or arbitration pursuant to this Section 7.

7.5 Related Claims. All claims that arise out of this Agreement, which are related to or dependent upon each other, shall be heard by the same arbitrator or arbitrators even though the parties are not the same unless a specific contract prohibits such consolidation.

8. GENERAL PROVISIONS.

8.1 Attorneys' Fees. If any party commences or is made a party to a lawsuit, arbitration or other proceeding to enforce or interpret this Agreement, the prevailing party in such proceeding shall be entitled to recover from the other party all reasonable attorneys' fees and other costs incurred in connection with such proceeding, including without limitation any appeal or enforcement of any judgment or decision rendered in such proceeding.

8.2 Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed duly given (i) on the date of delivery if personally delivered, (ii) one business day after delivery by overnight courier, telegram or electronic mail (provided that the sender retains a printed confirmation of delivery to the email address provided below), or (iii) three business days after mailing if mailed by first class mail certified or registered, postage prepaid, return receipt requested, to the parties at their addresses set forth below, or such other address designated from time to time in writing by such party to all other parties.

Noflin Enterprises
451 East Carson Plaza Drive
Suite 101
Carson, CA 90746

Magnolia Public Schools
250 West 1st Street, Suite 1500
Los Angeles, CA 90012
Phone: 323.490.0701
Email: pontiveros@magnoliapublicschools.org
Attention: Patrick Ontiveros

8.3 Amendment and Waiver. This Agreement may be amended only by a written document signed by all parties to this Agreement. Waiver of any provision of this Agreement shall not be deemed or constitute a waiver of any other provision, nor shall such waiver constitute a continuing waiver.

8.4 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, beneficiaries, legal representatives, successors and assigns. This Agreement may only be assigned with the prior written approval of the other party.

8.5 Governing Law and Severability. This Agreement shall be governed by and construed under the laws of the State of California, without regard to its conflicts of laws provisions. If any provision of this Agreement is invalid or unenforceable, and if the deletion of such provision would not adversely affect the receipt of any material benefit of the bargain by either party hereto, such provision shall (i) be modified to the minimum extent necessary to render it valid and enforceable, or (ii) if it cannot be so modified, be deemed not to be a part of this Agreement and shall not affect the validity or enforceability of the remaining provisions.

8.6 Counterparts. This Agreement may be executed in any number of counterparts, and each set of duly delivered identical counterparts, which includes all signatories, shall be deemed to be an original instrument.

8.7 Construction. This Agreement has been negotiated at arm's length and each party has been represented by legal counsel. Accordingly, any rule of law (including without limitation California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party drafting it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effectuate the intent of the parties and the purpose of this Agreement.

8.8 Further Assurances. The parties covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out this Agreement.

8.9 Entire Agreement. This Agreement represents the entire agreement between the parties with respect to the subject matter set forth above, and supersedes all previous oral and written agreements, communications, representations, and commitments between Independent Contractor, Client, and their respective predecessors.

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IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date set forth above.

Magnolia Educational & Research Foundation dba
Magnolia Public Schools

Noflin Enterprises

By: Alfredo Rubalcava

Name: Alfredo Rubalcava

Title: CEO and Superintendent

By: David Noflin

Name: David Noflin

Title: Authorized Signatory

[Signature Page to Independent Contractor Agreement

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. Initially, the Projects shall include the following:

- Client's Prop 39 Clean Energy Jobs Act grant ("Prop 39") energy upgrade projects
- Client's State of California Charter School Facility Incentive Grant ("CSFIG") capital improvement projects, specifically Client's CSFIG Projects at MSA-7
- Client's MSA-1 school new construction project, specifically, resolving a dispute with one adjacent neighbor and obtaining said neighbor's signature on a mutually acceptable settlement agreement.

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

Client's State of California Charter School Facility Incentive Grant ("CSFIG") capital improvement projects at MSA-7

- Supervise the completion of the CSFIG projects at MSA-7.
- Assure collection of appropriate paperwork to meet applicable State of California and Federal requirements (for example, the Davis-Bacon Act, as amended), 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.

MSA-1 New Construction Project

- Negotiate a settlement with the Nghiem neighbor to the south of the MSA-1 properties regarding the alleged damage to their backyard consistent with the directives of the MPS Board of Directors and or Ad Hoc Committee



Exhibit B

First Amendment to Independent Contractor Agreement

FIRST AMENDMENT TO INDEPENDENT CONTRACTOR AGREEMENT

THIS FIRST AMENDMENT TO INDEPENDENT CONTRACTOR AGREEMENT (this "**First Amendment**") is entered into as of October 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 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:

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

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

3. Amendments. The following Sections and/or subsections of the Original Agreement are amended as hereinafter set forth as of the date of this First 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 December 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 DOLLARS (\$12,500.00) for the first three (3) months and TWELVE THOUSAND TWO HUNDRED SIXTY SIX (\$12,266.00) for the second two (2) 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 three (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 two (2) equal installments of SIX THOUSAND ONE HUNDRED THIRTY THREE AND NO/100 DOLLARS (\$6,133.00) for the second two (2) 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 First Amendment may be executed in multiple counterparts each of which shall be an original, but all of such counterparts shall constitute one such First Amendment. Each Party shall be entitled to rely upon an electronically delivered counterpart of this First 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 Original Agreement remain in full force and effect. If there is a conflict between the terms of the Original Agreement and the terms of this First Amendment, the terms of this First Amendment shall control. The Original Agreement, as amended hereby, is hereby affirmed, and the provisions thereof, as so amended, shall remain in full force and effect. The Original 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 Original 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 First 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
- 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.



Exhibit C

Second Amendment to 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 D

Third Amendment to Independent Contractor Agreement

THIRD AMENDMENT TO INDEPENDENT CONTRACTOR AGREEMENT

THIS THIRD AMENDMENT TO INDEPENDENT CONTRACTOR AGREEMENT (this “**Third Amendment**”) is entered into as of February 24, 2020 (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 Parties entered into that certain Second Amendment to Independent Contractor Agreement as of December 24, 2019 (the “**Second Amendment**”) to extend the Term of the Original Agreement and amend the scope of work.

The Term of the Original Agreement, as amended by the First Amendment and Second Amendment, expires as of December 23, 2019. The Original Agreement, the First Amendment and the Second 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 Third 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 Third 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 Third 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 Third 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 March 23, 2020.

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 and SIX THOUSAND ONE HUNDRED THIRTY THREE AND NO/100 DOLLARS (\$6,133.00) for the final one month 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, in four (5) equal installments of SIX THOUSAND ONE HUNDRED THIRTY THREE AND NO/100 DOLLARS (\$6,133.00) for the second five (5) 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 Third Amendment may be executed in multiple counterparts each of which shall be an original, but all of such counterparts shall constitute one such Third Amendment. Each Party shall be entitled to rely upon an electronically delivered counterpart of this Third 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 Third Amendment, the terms of this Third 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.

[Balance of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Third 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