



Board Agenda Item: IV A: Action Item

Date: June 10, 2021

To: Magnolia Public Schools ("**MPS**") Board of Directors (the "**Board**")

From: Alfredo Rubalcava, Chief Executive Officer and Superintendent
Patrick Ontiveros, General Counsel & Director of Facilities

RE: Approval of Contract for Financial Advisor Buck Financial Advisors LLC

I. Proposed Recommendation(s)

Staff recommends and moves that the Board approves the selection of Buck Financial Advisors LLC as a financial advisor to MPS to assist in the sourcing of financing for MPS facilities projects and further recommends and moves that the contract presented by Buck for such services, attached as Exhibit A, be approved with such final edits as Staff may deem advisable and in the best interests of MPS.

II. Background

MPS anticipates multiple facilities projects over the next few years that will require financing. Such projects include, but are not limited to (1) the purchase and renovation of the property immediately adjacent to the MSA-1 middle school building located at 18238 Sherman Way, (2) the renovation of the MSA-1 middle school building parking lot to create recreation and open space, (3) the acquisition, via purchase or lease, and renovation of a new campus for MSA-5, which is temporarily relocating to the MSA-1 campus for the 2021-22 school year, and (4) an expansion of MSA-7 on its current campus which may include modular construction, stick built construction and site improvements. In addition, when it is able MPS would like to refinance its existing bond indebtedness – 2014 and 2017 tax exempt bonds – to receive more favorable terms.

MPS enjoys a solid working relationship with the holder of its existing indebtedness, Hamlin Capital Management. Nevertheless, Staff believes it would be prudent to hire its own advisor who can present MPS with multiple options – bank debt, CDFI debt, etc. – to finance future projects rather than simply relying on one source of funding. Rather than MPS Staff approaching multiple different lenders and underwriters to endeavor to find the financing with the most favorable terms, something which would be time consuming, MPS will be able to use Buck Financial for that purpose.



III. Procurement

Over the last few months, MPS has spoken with multiple parties about assisting MPS with securing financing, including Hamlin, BB&T Capital Markets, Urban Futures, Equitable Facilities Fund (EFF), and Self-Help (a CDFI). Each party only offers its own product or specializes in one product. For example, BB&T will principally steer clients to the tax exempt bond market.

Staff spoke with John Buck, principal of Buck Financial Advisors LLC, on May 4, 2021 to discuss his expertise and what services he can offer MPS. While he was the General Counsel of, and a Project Director, with Pacific Charter School Development (www.pacificcharter.org), MPS General Counsel and Director of Facilities, Patrick Ontiveros, became acquainted with John. John frequently helped Pacific Charter clients arrange for financing to purchase the facilities Pacific Charter had developed for them.

According to Buck Financial's website (<http://buckfinancial.net/>), "Buck Financial Advisors LLC is a full-service financial advisory firm specializing in charter school facility finance. Based in Denver, Colorado, Buck Financial works with charter schools nationwide. Our firm is not tied to one type of financing source, but rather tailors a financing strategy to meet the needs and objectives of the client through in-depth charter school knowledge and comprehensive investment and advisory services." It further provides, that it is "a full-service financial advisory firm specializing in charter school facility finance. Based in Denver, Colorado, Buck Financial works with charter schools nationwide. Our firm is not tied to one type of financing source, but rather tailors a financing strategy to meet the needs and objectives of the client through in-depth charter school knowledge and comprehensive investment and advisory services." Finally, it provides that "Buck Financial adds value by ensuring the financing meets your needs to flexibly operate in a changing marketplace. Often, the terms of a financing can impose unnecessary and inflexible terms which impact your ability to run your program. This is because many firms have only one financing source. Others simply act as "brokers", putting borrowers in contact with one-source firms, but playing no valuable role in the transaction (though their fee would indicate otherwise). Buck Financial is different in that we have experience with, and access to, multiple financing options and we take a meaningful role in your transaction to ensure your needs are met." To date, Buck Financial has assisted charter schools with over \$4.8 billion in financings.

Buck Financial only gets paid upon the successful completion of a financing and has proposed a fee of 0.325% of the financing as its fee. As an example, if Buck arranges financing of One Million Dollars (\$1,000,000), his fee will be Three Thousand Two Hundred Fifty Dollars (\$3,250). Any fee would be payable from the financing itself. Both Buck Financial and MPS may terminate the contract at any time for any reason or no reason. There is a cap of \$225,000 in the draft contract attached as Exhibit A which anticipates an overall financing of \$60 Million. Finally, completion of the services must be agreed upon by both Parties.

Staff spoke with KIPP SoCal to evaluate their experience with Buck and they commented that he added a great deal of value in the area of sourcing financing that they would not otherwise have been able to obtain without his assistance.

IV. Budget & Conclusion

Based on the foregoing, MPS Staff recommends that MPS sign a contract with Buck Financial Services LLC substantially similar to the one attached as Exhibit A with such changes as MPS Staff may



determine is in the best interests of MPS. Since any fees will be paid from the proceeds of any financing, there will be no effects on MPS or any MPS school's operating budget.



Exhibit A

Agreement for Financial Advisory Services

Buck Financial Services LLC

AGREEMENT FOR FINANCIAL ADVISORY SERVICES

This Agreement for Financial Advisory Services (“Agreement”), entered into this _____ day of _____ 2021 (the “Effective Date”), by and between Buck Financial Advisors LLC, a Colorado limited liability company (“Buck”) and Magnolia Educational & Research Foundation (MERF), a California nonprofit public benefit corporation, together known for purposes of this Agreement as the “Parties” and each individually as a “Party.”

WITNESSES:

- A. MERF is a California non-profit public benefit corporation and organization described under Section 501(c)3 of the Internal Revenue Code of 1986 which holds the charter to and operates multiple charter schools, and owns or leases the facilities in which such charter schools operate;
- B. MERF seeks to obtain financing for certain charter school facilities;
- C. Buck is an independent financial advisor and registered municipal advisor that is experienced in providing financial advisory services to charter schools regarding facility finance, and is willing to assist MERF with a variety of means of obtaining financing for charter school facilities;
- D. MERF wishes to exclusively engage Buck as its financial advisor for the purposes of providing such advisory services. MERF may from time to time engage or contract with a broker/dealer or commercial banking firms for the purpose of providing underwriting and other services or direct loans related to the development and implementation of a plan of finance that involve securities. Buck is not a broker/dealer, and does not provide underwriting or lending services.

Now, therefore, in consideration of the terms and conditions stated in this Agreement and of other valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties hereby agree to the following:

1. **Definitions:** The following terms shall have the meanings set forth below:
 - i. Issuer shall mean the administration, county board, city council, town board, school board, municipal authority, or other body or assembly charged with the issuing of bonds or other indebtedness for the benefit of MERF.
 - ii. Obligations shall mean bonds, notes, certificates of indebtedness, loans, or any other instrument of indebtedness such that may be issue or entered into by and for the benefit of MERF whether by an

Issuer, by a private lender, or otherwise, to obtain funds for the Project (defined below);

- iii. Project refers to all financing (including refinancing) activities (i) with respect to the physical facilities housing the operations of the MERF charter schools during the Term (defined below), and (ii) as to which MERF shall have directed Buck, in writing, to perform the Services (defined below).

2. **Services to be provided by Buck.** It is the express intent of both Parties that Buck shall serve as the exclusive financial advisor to MERF. Buck will assist, as requested and in consultation with MERF and its designated officers and representatives, in formulating a variety of advantageous options for MERF's undertaking of the Project, and for assisting MERF in implementing the strategy and structure of the Project-related option(s) selected for execution, including but not limited to the services outlined below (the "Services").

- i. Design and assist in implementing funding strategies and sources of funding the Project and obtaining terms and conditions for such funding for consideration by MERF;
- ii. Assist with the development of a plan of finance in conjunction with MERF administration;
- iii. Assist with the development of the financing terms and structures of various options to finance the Project;
- iv. Assist with the development and implementation a strategy to maximize the bond rating, when applicable, consistent with MERF goals and business plans;
- v. Prepare or have prepared written reports outlining the feasibility of the Project, including a report of an Independent Management Consultant covering the issuance of additional debt, if necessary;
- vi. Assist with development of financing projections and pro forma financial statements, including preparation of a report regarding the issuance of additional debt under the terms of the existing finance documents;
- vii. Participate in visits with credit rating agencies, insurers, and potential investors in MERF's Obligations, as requested by MERF;
- viii. Attend meetings as requested by MERF; and
- ix. Provide other services as requested by MERF, as reasonable and appropriate.

3. **Compensation for Services.** In consideration of Buck providing the Services, Buck shall be entitled to receive, and MERF shall pay Buck, a fixed fee not to exceed \$225,000.00 promptly upon completion of Services, such completion as agreed upon by both Parties. Buck and MERF will negotiate in good faith the exact fee owing for the Services for each financing during the Term (defined below). This compensation is not contingent upon the size or completion of any securities transaction, and Buck has not entered into any fee-splitting arrangements.

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i. **Reimbursement of Expenses.** In addition, MERF shall reimburse Buck for all reasonable, required and documented out-of-pocket expenses incurred by Buck in connection with the financing of any Project or incurrence of any Obligation covered by this Agreement, with the only exceptions being for expenses of telephone, email and facsimile. A cap of \$2,500.00 per transaction will apply to this reimbursement.

5. **Term of Agreement.** This Agreement shall commence on the Effective Date and continue through a period (the “Term”) that shall expire on the earliest to occur of the following: (i) Three years from the Effective Date, or (ii) upon the receipt by either Party in writing of the intent of the other Party to terminate this Agreement upon 30 days advance notice. If not otherwise terminated under this Section 4 (ii), this Agreement will automatically renew at the third anniversary of the Effective Date for a one-year period. Thereafter, unless terminated, this Agreement will automatically renew on each anniversary of the Effective Date for successive one-year periods.

6. **Compliance with MSRB Rule G-42.**

i. **Buck’s Registration Statement.** A copy of Buck’s most-recently filed municipal securities advisor registration statement, the Form MA, is available at www.secinfo.com. The Form MA provides important information such as, details regarding Buck’s business, the states where Buck is licensed to conduct business, and disclosure of legal and disciplinary events. Buck’s Form MA contains no legal or disciplinary event disclosures.

ii. **Conflict of Interest.** As a municipal advisor registered with the SEC and MSRB, Buck has a duty of care and duty of loyalty to non-profit clients such as MERF, as further described by the MSRB and SEC. Among other things, this means Buck must deal honestly and in good faith with MERF, including disclosing any potential conflicts of interest. Buck is not aware of any conflicts of interest to disclose.

7. **Disputes.** The Parties agree that any disputes arising under this Agreement will be settled by binding arbitration in the county of the MERF's headquarters, with the costs of such arbitration split evenly by the Parties.
8. **Indemnification.** (a) MERF agrees to indemnify, defend and hold Buck harmless from and against any and all losses, claims, damages, obligations, penalties, judgments, awards, and other liabilities ("Liabilities") caused by or arising from MERF's acts or omissions with respect to any financing wherein MERF is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) to have committed fraud, gross negligence or willful misconduct related to such financing; provided, however, that such indemnity shall not apply to Buck's own fraudulent, grossly negligence, or willful acts or omissions.
9. (b) Buck shall indemnify, defend and hold MERF and its directors, employees, officers or agents harmless from and against any Liabilities caused by or arising from : (i) the failure of Buck to comply with federal or state securities law applicable to the giving of advice or the performance of Buck's obligations hereunder; or (ii) Buck's acts or omissions with respect to any financing wherein Buck is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) to have committed fraud, gross negligence or willful misconduct related to such financing; provided, however, such indemnity shall not apply to MERF's own fraudulent, grossly negligence, or willful acts or omissions.

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10. **Assignment.** This Agreement is not assignable by the Parties. This Agreement shall be binding on, and shall inure to the benefit of, the Parties and their respective successors, and assigns.
11. **Author.** Neither this Agreement, nor any part thereof, shall be construed for or against any Party solely because such Party, or its representative, was the author or scrivener of this Agreement, or part thereof, or other instrument furnished pursuant to this Agreement.
12. **Modification and Waiver.** No modification, supplement or amendment of this Agreement shall be binding unless executed in writing by the Parties. No waiver of the provisions of this Agreement shall be deemed, or shall constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.
13. **Partial Invalidity.** If any provision of this Agreement is declared to be invalid by any court or judicial board for any reason, such invalidity shall not affect the remaining provisions of this Agreement, which shall be fully severable, and this Agreement shall be construed and enforced as if such invalid provision(s) had never been included in this Agreement.
14. **Counterparts.** This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile and portable-document-format (pdf) signatures shall be fully binding on the Parties and shall be deemed as if original signatures.
15. **Confidentiality.** Buck agrees to sign a reasonable confidentiality agreement with respect to any non-public information provided to Buck by MERF.

[Remainder of page intentionally left blank]

In acknowledgement of the terms and conditions of this Agreement, the Parties have signed the same as of the Effective Date set forth above.

Buck Financial Advisors LLC, a Colorado limited liability company

By: _____
John R. Buck, its Authorized Member

Magnolia Educational & Research Foundation, a California nonprofit public benefit corporation

By: _____

Print: _____

Title: _____

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