



Agenda Item:	II B: Recommended Action Item
Date:	September 12, 2024
To:	Magnolia Educational & Research Foundation dba Magnolia Public Schools (“MPS”) Audit & Facilities Committee (the “Committee”)
From:	Alfredo Rubalcava, CEO & Superintendent
Staff Lead(s):	Patrick Ontiveros, General Counsel & Director of Facilities Mustafa Sahin, Project Manager Katrina Jimenez, Assistant Project Manager
RE:	Approval of Berliner Architect Change Order for MSA-2 Conditional Use Permit Project at 16600 Vanowen Street (Ground Up Construction)

1. **Action Proposed:**

MPS Staff recommends that the Committee approve Berliner Architect’s \$12,000 change order, along with an \$8,000 contingency, to finalize the conditional use permit (“CUP”) application for Magnolia Science Academy-2 new site at 16600 Vanowen Street in Van Nuys. Furthermore, for the Committee to recommend and move that the Board adopt the same.

2. **Purpose:**

The purpose of this proposed action is to get the Board’s approval for Berliner’s change order allowing them to complete the architectural services for the CUP application for MSA2’s new site at 16600 Vanowen Street in Van Nuys.

3. **Background:**

MPM 16600 Vanowen Street LLC closed escrow on the property at 16600 Vanowen Street on February 27, 2023, to build a brand-new campus for MSA2. MPS leases the property from the LLC for the benefit of and occupancy by MSA2. Staff released an RFP for architectural services for CUP Application on 2/15/2023, received 4 proposals, (from Rafael Franco & Associates, Nadel, Berliner Architects and Franco Architects). A selection committee was formed to screen the vendors. After reaching out to all references, the staff decided to go with Berliner Architect due to our history working with them and they’re being the lowest bidder for the project.

- Rafael Franco & Associates - \$130,342
- Nadel - \$88,000
- Berliner Architect - \$62,700
- Franco Architect - \$145,000



4. Analysis:

Additional meetings were required due to the school's request to explore different options during the planning phase. Since our agreement is based on time and materials, the proposed hours have been fully utilized.

Please see approved change orders we have received so far:

Preliminary Design	We received credit towards the initial design for CUP because they did a scheme design during the escrow	\$9,000
Initial Design for CUP	This includes consultants and reimbursables	\$62,770
WA_01	Redesign Efforts	\$10,000
WA_02	Signage	\$5,000
WA_03	Additional CUP costs, including consultants	\$16,400
WA_04	Cost Estimate	Note: This was not approved
	Total Spent:	\$103,170
WA_05	<i>Pending Approval</i>	\$12,000
	<i>Pending Approval Contingency</i>	\$8,000

5. Impact:

Ongoing design services are essential as we progress with the CUP. Approving this change order will enable us to successfully complete the CUP process.

6. Budget Implications:

The total projected costs for this change order shall not exceed \$20,000 and the costs will be paid for out of MSA 2's operating budget. We will incorporate these costs into the 2024-25 First Interim Report to be presented to the board in December 2024. MSA 2 is expected to maintain a balance with a projected surplus for the remainder of the 2024-25 fiscal year.

7. Exhibits:

Exhibit A. Berliner Architect Change Order for MSA-2 Conditional Use Permit Project



Exhibit A.

Berliner Architect Change Order
for MSA-2 Conditional Use Permit
Project

Work Authorization Number	05	Date	August 1, 2024
Project	Magnolia Science Academy 2 - CUP	Project Number	22-059.5
Project Location	16600 and 16602 W Vanowen Street		
Client	Magnolia Public Schools		

Authorization is confirmed for Berliner Architects, to perform the following services:

Berliner Architects exceeded the time and materials (T&M) fees for the CUP efforts by \$4,000. Our team continues to coordinate with Veronica Becerra and remains involved in the CUP approval process with LA City Planning.

We are proposing to increase the time and materials (T&M) fees to \$12,000 for the ongoing CUP approval coordination.


Berliner Architects - T&M NTE	\$12,000
Total Fees	\$12,000

Original or Master Agreement (if any), dated: March 10, 2023

Other References:

Fee and Basis

Total Fee -	NTE \$12,000
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Date service began:	August 2023	Services projected to be completed no later than the following, if indicated:
Services requested by:	Alfredo Rubalcava	Date of Request: 8/1/2024
Prepared by:		Date Signed: 8/1/2024

See reverse side of this Work Authorization (Page 2) for Terms and Conditions.

Client Authorization by:	Date Signed:
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Work Authorization

Terms and Conditions

1. Berliner Architects shall provide the services specified on page 1 of this Work Authorization. Terms and Conditions shall be in accordance with the original or master agreement between Client and Architect, or if such does not exist or is not applicable to this Work Authorization, the Terms and Conditions below shall be incorporated into this Work Authorization. Should anything arise that is not covered by such Terms and Conditions or this Work Authorization, then applicable provisions of Berliner Architects Standard Terms and Conditions STC, current as of the date of this Work Authorization, shall govern. Copies of these documents are available from the Architect on request. The provisions on page 1 of the Work Authorization take precedence over the Terms and Conditions. Where a portion of one document is amended by another of later date, all unmodified portions shall remain in effect. The term "Architect" includes the Architect's officers, directors, shareholders, employees and agents. This Agreement shall not create a contractual relationship or duty to any third party.
2. Fees to be compensated on an hourly basis shall be computed by multiplying the hours directly spent on the Project by the hourly billing rates of the Architect's standard rate schedule, which rates are subject to adjustment periodically, plus 1.1 times any consultants invoices, unless otherwise stated in the Letter of Agreement.
3. Fees to be compensated on a lump sum or percentage basis shall be based upon the Architect's determination of the proportion of its services completed through the billing period.
4. The following Reimbursable Expenses incurred by the Architect in connection with the Project are not included in the Fee stipulated unless specifically stated in this Work Authorization or the Master Agreement, if any: Models and renderings, photography, printing, reproductions, reproducible, telecommunications, data communications, facsimile, long distance telephone calls, travel, out-of-town living expenses, shipping, delivery and messenger service, sales taxes and the like, shall be billed at 1.1 times the amounts invoiced to Berliner Architects, or where incurred as in-house hourly costs, at the Architect's standard hourly billing rates, unless otherwise stated in this Work Authorization. Other than for computer usage in connection with accounting procedures and non-technical word processing, usage of computer, CADD and plotting equipment shall also be a Reimbursable Expense, billed at the Architect's standard rates.
5. Payment for fees and expenses, normally billed monthly, shall be due upon receipt of the Architect's invoice. Disputes and questions regarding an invoice shall be brought to Architect's attention within ten days following receipt of invoice, and shall not be cause for withholding payment for the undisputed portion of the invoice. A service charge of 1.5% per month, in addition to reasonable collection expenses, shall be added to balances unpaid 30 days after invoice date. The Architect reserves the right to suspend or terminate its services, or withhold its documents without notice, if payment in full is not received within 60 days after invoice date, and the Architect shall not be held liable for any claims or losses that may result therefrom.
6. If the scope of the Project, Architect's services, or Project Time is increased, compensation shall be increased accordingly. If the Scope of the Project or Architect's services is decreased, fees for the balance of the Architect's services not yet performed shall be adjusted accordingly.
7. After completion or termination of the Architect's services, and after all payments due the Architect have been made, the Client may retain and use only for alteration, additions, or completion for this Project, copies or reproducible of drawings, specifications, and other materials prepared by the Architect in connection with the Project. In the event of such use, the names and other identifications of the Architect and its consultants shall be removed from the documents and the Architect and its consultants shall be indemnified and held harmless by the Owner for claims arising out of 1) work performed subsequent to the Architect's services, 2) work not constructed or installed in accordance with the Architect's full Construction Documents, or 3) work constructed or installed without the Architect's full construction observation services.
8. In the event of any dispute, controversy or claim arising out of this Agreement or any alleged breach thereof ("Dispute"), the Client and Architect shall participate in a mediation conducted under the auspices of a recognized neutral third-party professional Mediation Service, in a good faith effort to negotiate a resolution of the Dispute, prior to undertaking any legal action. The selection of the Mediation Service shall be acceptable to the parties, and the cost of the Mediation Service shall be borne equally by the parties. In any legal action following the unsuccessful mediation of a dispute, the prevailing party shall be entitled to reasonable attorney's fees.
9. The Client acknowledges that the Architect is unable to reasonably obtain insurance for claims arising out of the performance or failure to perform professional services, including but not limited to, the preparation of reports, designs, drawings and specifications or testing related to the investigation, detection, abatement, replacement, discharge or removal of products, materials or processes containing asbestos, PCB, or any other toxic or hazardous contaminants, materials, air pollutants or water pollutants at the site ("Hazardous Substances" or "Hazardous Substances Services"). Accordingly, the Architect shall not provide such services. The Client hereby agrees to bring no claim for negligence, breach of contract, indemnity or other cause of action against the Architect if such a claim in any way arises out of Hazardous Substances or Hazardous Substances Services.
10. The Client agrees to indemnify, defend and hold the Architect harmless from and against any and all claims, suits, demands, losses and expenses, including reasonable attorneys' fees and all legal expenses and fees incurred on appeal and all interest thereon, accruing to or resulting from any and all persons, firms or any other legal entity, on account of any damage or loss to property or persons, including death, arising out of 1) Hazardous Substances or Hazardous Substances Services, except where the Architect is found to be solely liable for such damages or losses by a court or forum of competent jurisdiction; or 2) the performance or non-performance of any obligations under this Agreement except to the extent found by a court or forum of competent jurisdiction to be attributable to the negligent errors or omissions of the Architect.
11. The Client shall provide complete Project information, which the Architect shall be entitled to rely upon. The Client shall designate a representative authorized to act in its behalf to provide decisions, liaison with the Architect, and approvals of drawings, reports, presentations and other documents and data. Client's written decisions, approvals and authorizations, and Architect's services shall be provided promptly in order to meet mutually agreed project schedules. Services on a phase shall commence only after Client's written approval of the previous phase and Client's authorization to proceed. Out-of-sequence services, if requested, shall be compensated as Additional Services.
12. The Architect shall not have control over or charge of, and shall not be responsible for, construction means, methods, techniques, construction schedules, sequences or procedures, fabrication, procurement, shipment, delivery, receipt, inspection or installation, or for safety programs in connection with the Work, or for acts, omissions, or failure to carry out the Work in accordance with the Contract Documents by the Contractor, subcontractors, or any other persons or entities or their agents or employees performing or supplying the Work.
13. The Client hereby agrees that to the fullest extent permitted by law, the Architect's total liability to the Client for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way relating to the Project or this Agreement from any cause or causes including, but not limited to, the Architect's negligence, errors, omissions, breach of contract or breach of warranty shall not exceed the total compensation received by the Architect under this Agreement.