



Board Agenda Item #	II B- Consent Item
Date:	8-10-2020
To:	Magnolia Board of Directors
From:	Alfredo Rubalcava, CEO & Superintendent
Staff Lead:	Gokhan Serce, Principal
RE:	ASES agreements for MSA-San Diego

Proposed Board Motion

I move that the board grants approval to Mr. Rubalcava, CEO and Superintendent of MPS to sign the MOA for MSA – SD Afterschool ASES Program with YMCA of San Diego County (YMCA) and the MOA with SDCOE.

Background

MSA-SD has been receiving after school program grant and services through San Diego Unified School District (SDUSD.) In Jan 2016 SDUSD informed MSA-SD that the district would no longer be providing PrimeTime before/after school services at Magnolia in 2016-17 school year as MSA-SD’s fiscal agent, however the After School Education and Safety (ASES) funds that fund the program would remain allocated to Magnolia either through SDCOE or directly. In order to continue to receive these funds to offer a before/after school program, MSA-SD contacted San Diego County Office of Education (SDCOE). After switching to SDCOE, MSASD needed an agreement with SDCOE annually and an agreement with the after school service provider YMCA of San Diego County (YMCA). The term of these agreements are July 1, 2020 through June 30, 2021. YMCA has been MSA-SD’s after school service provider for the past 8 years.

Based on MPS policy MPS Board wanted to receive the grant letter to approve the agreements for the ASES services. Unfortunately, our consortium, SDCOE, doesn’t provide the grant letters until February of that school year. Instead of the grant letter we receive a projected funding and also receive an agreement from County office of Ed in late October. In the last three years MPS board requested to see the grant letter to approve the agreements. Due to the conflict between SDCOE’s current practice and MPS Boards policy we were not able to sign an agreement with our service provider, YMCA, before the school starts. As a result of this issue we were not able to pay to YMCA until February of the school years for the last three years.

Although we still do not have the grant letter we have emails from SDCOE confirming the projected funding amount and the grant approval for the next three years these documents are attached.

Also due to Covid 19 school closures we were not able to spend all the funds in 19-20 school year. Attached is the addendum agreement to spend the remaining funds.

Budget Implications

ASES is a state grant and needs to be disbursed in compliance with the California ED Code. The fiscal agent, SDCOE, reimburses MSA-SD for the expenses occurred by the YMCA. ASES program is currently not included in the 2020-21 proposed budgets. All income and expenses will be added and budgeted accordingly upon approval.

Funding Source: ASES grant money through SDCOE Consortium

CFO reviewed and approved.

Exhibits (attachments):

- ASES Grant Confirmation Email
- FY20-21 Funding Projection from SDCOE
- Guidance Related to ASES Grant Extension
- 19-20 ASES Extension Amendment
- 20-21 ASES MOA between MSA-San Diego and YMCA

YMCA of San Diego County
Magnolia Science Academy-ASES Attachment A

Organization Name	Indirect Costs/Indirect Cost Rate Retained (Should not exceed 5% of total Grant Award)		Direct Administrative Costs Retained (Should not exceed 15% of Total Grant Award including Indirect Costs)		Direct Service Costs Retained (Should be at least 85% of total Grant Award)		Total Amount of Grant Award Retained	
	Dollar Amount	% of Grant Award	Dollar Amount	% of Grant Award	Dollar Amount	% of Grant Award	Dollar Amount	% of Grant Award
San Diego County Office of Education	0	0.00%	1917.64	2.00%	0	0.00%	1917.64	2.00%
Magnolia Science Academy	0	0.00%	2,876.46	3.00%	0	0.00%	2,876.46	3.00%
YMCA of San Diego County	4794.10	5.00%	4,794.10	5.00%	81,499.67	85.00%	91,087.87	95.00%
Total Costs Retained	4,794.10	5.00%	9,588.20	10.00%	81499.67	85.00%	95,881.97	100.00%



San Diego County Office of Education Main Campus
6401 Linda Vista Road, San Diego, CA 92111
858-292-3500 | www.sdcoe.net

May 5, 2020

To all Districts/Charter Contacts:

We are happy to report additional fiscal and grant guidance related to grant funding and expenditures, as well as extension of MOUs.

On Monday, April 27th, the CDE Expanded Learning Division (ELD) issued [guidance](#) related to the extension of the ASES, 21st CCLC, and ASSETs program grants. This guidance stated that grants would be extended until December 31, 2020.

SDCOE Expanded Learning sought clarification from the CDE ELD regarding whether this extension was a use of 2019-20 funds through December 31, 2020 or rather an extension of attendance and expenditure reporting. **The CDE ELD has confirmed that grantees may spend 2019-20 funds through December 31, 2020.** In addition to core grant programs, this guidance also includes supplemental, frontier, and equitable access grants.

Districts/Charters may utilize 2019-20 grant funding in parallel with 2020-21 grant funding after July 1, 2020. This means that sub-grantees must pay close attention to managing funds appropriately and be purposeful in their time accounting and fiscal expense tracking. Efforts should be made to provide clear policies and procedures for school sites to utilize these funds appropriately (i.e., funds to be used for summer enrichment programming; earlier deadlines for expenditures, etc.). Funds should not be commingled and the CDE ELD has specifically cited in [new guidance](#) issued on April 30, 2020 that “federal supplement versus supplant provisions remain in force.”

San Diego County Superintendent of Schools Dr. Paul Gothold

San Diego County Board of Education
Paulette Donnellon Guadalupe González Alicia Muñoz Mark Powell Rick Shea

May 5, 2020

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To this end, SDCOE Expanded Learning will not be entering into an amended MOU. Rather we will be extending the MOU to December 31, 2020. We recommend that you make this MOU extension an information item on your June board agenda.

As always, we are here to assist in working through any questions that you might have. Please feel free to contact Gabriela Delgado, Senior Manager, Student Services and Programs, at gbaeza@sdcoe.net or 619-616-0897.

Regards,

A handwritten signature in black ink, appearing to read 'MS' followed by a horizontal line.

Michael Simonson
Deputy Superintendent, Chief Business Officer

AMENDMENT TO AGREEMENT BETWEEN
MAGNOLIA EDUCATIONAL & RESEARCH
FOUNDATION FOR MAGNOLIA SCIENCE
ACADEMY-SAN DIEGO AND
YMCA OF SAN DIEGO COUNTY

This Amendment to Agreement is entered into by and between the Magnolia Educational & Research Foundation for Magnolia Science Academy-San Diego (Magnolia Science Academy) and the YMCA of San Diego County (YMCA).

RECITALS

WHEREAS, on July 1, 2019, Magnolia Science Academy entered into a Memorandum of Agreement with the YMCA for the term of July 1, 2019 through June 30, 2020, under which the Consultant/Professional agreed to provide After School Education and Safety (ASES) Program services for a total not-to-exceed Agreement amount of \$84,029.40

WHEREAS, on April 27, 2020 the California Department of Education Expanded Learning Division issued guidance related to the extension of the 19-20 ASES program grants until December 31, 2020 due to COVID-19.

WHEREAS, on May 5, 2020 the San Diego County Office of Education (SDCOE) notified Magnolia Science Academy that they would be extending the ASES Program MOU with Magnolia Science Academy and that grantees may spend 2019-20 funds through December 31, 2020 to support the 20-21 school year.

WHEREAS the Magnolia Science Academy and YMCA mutually agree to use any extended 19-20 ASES Program funds contracted to the YMCA to provide ASES Program services through Dec 31, 2020.

NOW, THEREFORE, Magnolia Science Academy and YMCA agree to amend the Agreement as follows:

1. Modify Section 10 to amend the term of agreement to July 1, 2019 - Dec 31, 2020.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed on their behalf by their fully authorized representatives. Except as specifically herein amended, the Agreement will remain in full force and effect.

Magnolia Science Educational &
Research Foundation for Magnolia
Science Academy-San Diego

YMCA of San Diego County

Authorized Signature

Authorized Signature

Alfredo Rubalcava

Name

Baron Herdelin-Doherty

Name

CEO and Superintendent

Title

President & CEO

Title

Date

Date

MEMORANDUM OF AGREEMENT

After School Education & Safety (ASES) Program 2020-21

This Agreement is to provide program services for **After School Education & Safety (ASES) Program** and is entered into this 1st day of July 1, 2020 by and between the **Magnolia Educational & Research Foundation for Magnolia Science Academy-San Diego** (herein known as “Magnolia Science Academy”) and **YMCA of San Diego County** (herein known as “YMCA”) who agrees to provide the services in accordance with the provisions of the California Education Code (EC) sections 8482-8484.7.

1. General Conditions:

ASES Program Hours of Operation and Attendance Requirements:

1. The After School Program will begin operation based on an agreed upon regular schedule that best meets the needs of Magnolia Science Academy in 2020-21.
2. To ensure that subsequent ASES grant awards will not be reduced due to insufficient program attendance and performance, YMCA of San Diego County must enforce the grant rules in compliance with **California Education Code 8483.7. (a) (1) (A)**. California Education Code 8483.7. (a) (1) (A). states: Each school that establishes a program pursuant to this article is eligible to receive a three-year direct grant, that shall be awarded in three one-year increments and is subject to semi- annual attendance reporting and requirements as described in Section 8482.3 once every three years:
 - i. The CDE shall provide technical support for development of a program improvement plan for grantees under the following conditions: (I) If actual pupil attendance falls below 75 percent of the target attendance level in any year of the grant. (II) If the grantee fails, in any year of the grant, to demonstrate measurable outcomes pursuant to Section 8484.
 - ii. The CDE shall adjust the grant level of any school within the program that is under its targeted attendance level by more than 15 percent in each of two consecutive years.
 - iii. In any year after the initial grant year, if the actual attendance level of a school within the program falls below 75 percent of the target attendance level, the CDE shall perform a review of the program and adjust the grant level as the CDE deems appropriate.

Failure to comply with California Education Code 8483.7 shall result in a reduction of the ASES grant award allocations.

2. Web-Based Attendance and Daily Attendance Accountability Requirements:

1. The YMCA will implement the *City Span Web-based Attendance Tracking System* for daily program attendance entry.
2. The *City Span Web-based Attendance Tracking System* will ensure that both virtual and on-site attendance is documented based on the guidance from the San Diego County Office of Education.
3. YMCA will identify key staff members to participate in trainings provided by SDCOE/City Span for implementation of the *City Span Web-based Attendance Tracking System*.
4. In addition, YMCA must monitor on a weekly basis that all students sign-in and sign-out comply with the Cityspan times in system for each student.
5. Magnolia Science Academy administration will facilitate monthly attendance reporting via Cityspan and submitting attendance revisions with the SDCOE.

3. Staffing Requirements:

1. YMCA must ensure a student-to-staff ratio based on the aligned safety guidance from Magnolia Science Academy.
2. YMCA must establish qualifications for each staff position that, at a minimum, ensure that all staff members who directly supervise pupils meet the minimum qualifications for an instructional aide, pursuant to the policies of Magnolia Science Academy.
3. YMCA shall be responsible for students, staff, and parents accessing services under this Agreement. YMCA certifies that it shall provide adequate supervision of the students, staff, and other program personnel, and that its staff will follow legal guidelines on reporting child abuse/neglect.
4. YMCA must certify that all personnel providing services to students are adequately screened through Livescan and that such personnel has provided evidence of freedom from active tuberculosis prior to starting service at any school site.

4. State Mandated Data and Evaluation Requirements:

1. YMCA will collaborate with Magnolia Science Academy and SDCOE to disseminate statewide evaluation process as determined by the CDE.
2. YMCA will respond to surveys or other methods of data collection that may be required throughout the duration of the program.
3. Both Magnolia Science Academy and YMCA will collaborate to ensure timely and accurate collection of data required to conduct program evaluations including but not limited to Annual Performance Reports.
4. Magnolia Science Academy will share evaluation data reports with YMCA to use for continuous quality improvement plan.

5. Student Reimbursement Rate, Payment, and Program Expenditure Guidelines:

1. Upon notification of overpayment in excess of the grant award amount or request for reimbursement of unexpended ASES grant funds by the CDE, Magnolia Science Academy or YMCA will be required to return the entire amount of funding in question to the San Diego County Office of Education.
2. Ensure that expenditures shall comply with all applicable provisions of state and local rules, regulations and policies relating to the administration, use, and accounting for public school funds, including, but not limited to, California Education Code 8483.7.
3. Failure to comply with California Education Code 8483.7 shall result in a reduction of the ASES grant award during the current fiscal year or in subsequent years of the grant.
4. Magnolia Science Academy shall amend contract with the YMCA if the state ASES reimbursement rate is adjusted during the contract agreement. The current rate is \$8.88 per student/per day for the PM Program.
5. Magnolia Science Academy shall amend contract maximum to the appropriate percentage grant award if increased or reduced in contract year.

6. Federal Program Monitoring and Annual Program Audit Guidelines.

1. Magnolia Science Academy shall provide a copy of Federal Program Monitoring (FPM) and Annual Program Audit findings/exceptions to SDCOE and YMCA relative to the administration of the ASES Grant Requirements per California State Education Code Sections 8482-8484.6 and

the Standards and Procedures for Audits of California K-12 Local Education Agencies 2007-2008; Article 3.1. § 19846. After School Education and Safety Program.

2. Both Magnolia Science Academy and YMCA personnel shall participate in Federal Program Monitoring (FPM) training when required.
3. Both Magnolia Science Academy and YMCA of San Diego County will attend Federal Program Monitoring (FPM) meetings with the CDE.

7. Budget Restrictions

1. The Magnolia Science Academy shall retain 3% or \$2,876.46 of grant funds for direct administrative costs.
2. No more than 10% or \$9,588.20 of grant funds may be used for administrative costs by the YMCA.
3. No more than 5% of YMCA funds should be expended on indirect costs by YMCA. The YMCA must expend at least 85% or \$81,499.67 of grant funding in direct services for pupils.
4. Funds must supplement, not supplant, existing services. Programs cannot use ASES funds to pay for existing levels of service.

8. Program Matching Funding Requirements.

1. ASES Program must provide local funds totaling no less than one-third of the grant amount.
2. The Magnolia Science Academy shall provide matching funds for facilities and space usage not to exceed 25% of total match requirement.
3. YMCA of San Diego County will provide at least 10% of total match requirement unless otherwise agreed upon between Magnolia Science Academy and YMCA.
4. State categorical funds for remedial education activities may not be used to fulfill match requirements.

9. Additional ASES Program Operation Requirements.

1. Both Magnolia Science Academy and YMCA shall each designate an ASES Contact person.
2. Ensure the designated ASES Contact(s) attends the scheduled ASES District Contact meetings provided by the Resources & Technical Assistance Center (RTAC), the After School Administrative Program Support Center (ASC), the Children's Initiative (CI), and the San Diego Office of Education (SDCOE).
3. Ensure that the program will include an educational and literacy element designed to provide tutoring and/or homework assistance in one or more of the following core content subject areas: language arts, mathematics, history and social science, science and computer training.
4. The program will have an educational enrichment element that may include, but not limited to STEM, SEL, organized sports, visual and performing arts, service learning, and youth development activities. These items are to be discussed collaboratively between district administration, school administration, and YMCA to best meet the needs of Magnolia Science Academy.
5. Plan the program through a collaborative process that includes parents, youth, and school administration and personnel, community organizations, and the private sector.
6. If the site is not located on a school campus, it must be as accessible and available as the school site with safe transportation provided by Magnolia Science Academy to enrolled participants.
7. Magnolia Science Academy shall collaborate with YMCA to provide snack and/or supper program that conforms to Article 2.5 of Chapter 9 of Part 27, commencing with Education Code Section 49430. (EC 8482.3(d)).
8. Provide information regarding the ASES Program in a form and language that is easily

understandable to all parents.

9. Each partner in the application will share responsibility for the quality of the program. Magnolia Science Academy and YMCA will collaborate to conduct an annual continuous quality improvement process.
10. Magnolia Science Academy and YMCA will collaborate and coordinate with the regular school day program.
11. Magnolia Science Academy is responsible to ensure the YMCA has access to safe, clean, and supportive indoor/outdoor space at participating school sites to conduct a high quality program. Space shall include adequate indoor space for all academic and enrichment activities.
12. Each ASES funded site will be responsible for the development of an After School Program Plan as part of the San Diego ASES Program Consortium.
13. Magnolia Science Academy and YMCA administration will review the ASES Program Plan annually and provide updates and/or revisions based on ASES program components, California Department of Education guidelines, and identified district program changes based on changes in grant or sites.
14. Ensure that ASES staff attends District and SDCOE training opportunities designed to maximize program effectiveness.
15. Host scheduled technical assistance site visits conducted by staff from RTAC, the After School (ASC) and the CI.
16. Collaborate with staff from RTAC, the After School (ASC), and the CI to review site visitation and technical assistance reports and plan for continuous program improvement.
17. Magnolia Science Academy and YMCA will ensure the proper record keeping and documentation of program activities and the timely submission of all required reports. All reports due to San Diego County Office of Education and delegated to YMCA by Magnolia Science Academy shall include written authorization and detailed instructions at least 30 days' notice unless otherwise agreed upon by both parties.
18. Magnolia Science Academy and YMCA will work collaboratively to ensure that the ASES Program is following the Magnolia Public Schools Health & Safety Policy for Covid-19 based on the California Department of Health Covid-19 Industry Guidance for Schools and School-Based Programs.

10. Terms and Conditions of the Grant Award

1. YMCA will make reports to Magnolia Science Academy as necessary to enable Magnolia Science Academy to perform its duties and will maintain such records and provide access to those records as Magnolia Science Academy deems necessary. YMCA shall maintain such records for at least five years after the completion of the activities for which the funds are used.
2. YMCA will make any application, evaluation, periodic program plan, or report relating to each program available to parents and other members of the general public (California Public Records Act, Government Code Section 6250 et seq.)
3. Record revenues and expenditures for this grant as follows: for Standardized Account Code Structure (SASC) coding, use Resource Code 9065 and Revenue Object Code 8590.
4. This grant shall be administered in accordance with the provisions of California Education Code (EC) sections 8482-8484.6. Further, expenditures shall comply with all applicable provisions of federal, state and local rules, regulations and policies relating to the administration, use and accounting for public school funds, including, but not limited to, the Education Code of the State of California.
5. If a program participant receives state funds to operate ASES in excess of the amount warranted due to the program failing to operate, raising an inadequate amount of matching funds, or failing to

expend all grant funds, the San Diego County Office of Education (SDCOE) shall reduce any subsequent allocations by the amount equal to the overpayment.

6. YMCA shall provide monthly invoice and financial expenses to Magnolia Science Academy.

7. Magnolia Science Academy shall be responsible to submit quarterly expenditure reports and program reports to the San Diego County Office of Education.

PERIOD OF AGREEMENT

The term of this Agreement shall be July 1, 2020 through June 30, 2021.

11. COMPENSATION/COSTS AND PAYMENT SCHEDULE

Magnolia Science Academy shall reimburse funds to YMCA of San Diego County within 30 days after invoice for monthly expenses submitted from YMCA of San Diego County.

Annual total ASES 20-21 allocation(s) **shall not exceed *\$91,087.87** to YMCA of San Diego County.

12. YMCA OF SAN DIEGO COUNTY & MAGNOLIA SCIENCE ACADEMY CONTACT PERSONS

Magnolia Science Academy Contact:

Gokhan Serce
Principal
Magnolia Science Academy-San Diego
Magnolia Public Schools
6526 Estrella Ave
San Diego, CA 92120
P: 619-644-1300
E gsecre@magnoliapublicschools.org

YMCA of San Diego County Contact:

Steve Hensel
Executive Director
Expanded Learning Programs
YMCA of San Diego County
3333 Camino del Rio Suite 110
San Diego, CA 92108
P: 619-521-3055 x2620
E: shensel@ymca.org

Copy to: Magnolia Educational & Research Foundation
dba Magnolia Public Schools, Chief Operations Officer
250 E 1st St., Suite 1500, Los Angeles, CA 90012
(213)628-3634

13. CONFIDENTIALITY

1. All communications and information obtained by YMCA from Magnolia Science Academy relating to this agreement, and all information developed by YMCA under this agreement, are confidential. Except as provided in Subsection 3, without the prior written consent of an authorized representative of Magnolia Science Academy, YMCA shall neither divulge to, nor discuss with, any third party either the work and services provided hereunder, or any communication or information in connection with such services or work, except as required by law. Prior to any disclosure of such matters, whether as required by law or otherwise, YMCA shall inform Magnolia Science Academy in writing, of the nature and reasons for such disclosure. YMCA shall not use any communications or information obtained from Magnolia Science Academy for any purpose other than the performance of this agreement, without Magnolia Science Academy's written prior consent.

2. At the conclusion of the performance of this agreement, YMCA shall return to Magnolia Science Academy all written materials constituting or incorporating any communications or information obtained from Magnolia Science Academy upon Magnolia Science Academy's specific approval, YMCA may retain copies of such materials, subject to the requirements of Subsection 1.

Magnolia Science Academy may disclose to any vendor, or YMCA approved third parties, any information otherwise subject to Subsection 1 that is reasonably required for the performance and administration of the scope of work described in this contract. Prior to any such disclosure, Magnolia Science Academy shall obtain the YMCA of San Diego County's written agreement to the requirements of Subsection 1.

3. YMCA obligation of confidence with respect to information submitted or disclosed to YMCA by Magnolia Science Academy hereunder shall survive termination and comply with all requirements outlined in this Agreement which is attached hereto and made a part hereof.

Likewise, Magnolia Science Academy obligation of confidence with respect to information submitted or disclosed to Magnolia Science Academy by YMCA hereunder shall survive termination and comply with all requirements outlined in this Agreement which is attached hereto and made a part hereof.

14. CONFIDENTIALITY OF SERVICES

Identities of all respondents including but not limited to staff, principal(s), parent(s), student(s) and individual responses on surveys in conjunction with evaluation will be kept confidential by the YMCA. The YMCA will not redistribute or share any data or information with any agency, entity or individual without the written consent of Magnolia Science Academy.

YMCA of San Diego County agrees to all of the following:

(a) YMCA shall not disclose Private Information obtained from Magnolia Science Academy the performance of this Agreement to any other vendor, person, or other entity, unless one of the following is true:

(i) The disclosure is authorized by this Agreement;

(ii) The YMCA received advance written approval from the Magnolia Science Academy to disclose the information; or

(iii) The disclosure is required by law or judicial order.

(b) Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement. Any disclosure or use of Private Information authorized by a Contracting Department shall be in accordance with any conditions or restrictions stated in the approval.

(c) Any failure of contractor to comply with the Nondisclosure of Private Information Ordinance shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, Magnolia Science Academy may terminate this Agreement, debar Contractor, or bring a false claim action against Contractor.

15. TERMINATION FOR CONVENIENCE

1. Either party to this agreement may, by written notice to the other party, terminate this agreement in whole or in part at any time, for either party's convenience.
2. If the termination is for the convenience of Magnolia Science Academy, upon receipt of 60 days' notice, YMCA shall:
 - (1) Immediately discontinue all services affected (unless the notice directs otherwise) and
 - (2) Deliver to Magnolia Science Academy all information and material as may have been involved in the provision of services in the performance of this agreement, whether completed or in process. Termination of this agreement shall be as of the date of receipt by YMCA of such notice.
 - (3) YMCA shall submit a final invoice within 60 days of termination and upon approval Magnolia Science Academy shall reimburse for services actually performed prior to the effective date of termination and other costs reasonably incurred by YMCA to implement the termination.

16. TERMINATION FOR DEFAULT

1. Either party to this agreement may, by written notice to the other party, terminate this agreement in whole or in part at any time because of the failure of to fulfill its contractual obligations.
2. If this agreement is terminated by Magnolia Science Academy, upon receipt of such notice, YMCA shall:
 - (1) Immediately discontinue all services affected (unless the notice directs otherwise) and
 - (2) Deliver to Magnolia Science Academy all information and material as may have been involved in the provision of services in the performance of this agreement, whether completed or in process. Termination of this agreement shall be as of the date of receipt by YMCA of such notice.
3. If the termination is due to the failure of YMCA to fulfill its contractual obligations, Magnolia Science Academy may take over the services, and complete the services by contract or otherwise.

17. INDEPENDENT CONTRACTOR

It is expressly understood that at all times, while rendering the services described herein, and in complying with any terms and conditions of this Agreement, YMCA is acting as an independent contractor and not as an officer, agent, or employee of Magnolia Science Academy.

18. HOLD HARMLESS

YMCA agrees to hold harmless, defend, and to indemnify Magnolia Science Academy, its officers, agents, and employees against any and all losses, injuries, claims, actions, judgments, and liens arising from, or alleged to have arisen from, Magnolia Science Academy performance, or lack thereof, under this Agreement.

Likewise, Magnolia Science Academy agrees to hold harmless, defend, and to indemnify YMCA, its officers, agents, and employees against any and all losses, injuries, claims, actions, judgments, and liens arising from, or alleged to have arisen from, YMCA performance, or lack thereof, under this Agreement.

19. WORKERS' COMPENSATION

YMCA shall provide workers' compensation insurance or shall self-insure their services in compliance with provisions of Section 3700 of the Labor Code of the State of California. A Certificate of Insurance may be provided, providing for such, or YMCA shall sign and file with Magnolia Science Academy the following certificate:

"I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provision of that Code, and I will comply with such provision before commencing the performance of the work of this Agreement."

20. NON-FUNDING

Notwithstanding any of the foregoing provisions, if for any fiscal year of this Agreement the San Diego County Office of Education School Board fails to appropriate or allocate funds for future periodical payments under this Agreement, Magnolia Science Academy will not be obligated to pay the balance of funds remaining unpaid beyond the fiscal period for which funds have been appropriated or allocated, and may terminate this Agreement with 30 days' written notice.

21. AUDIT

YMCA agrees to maintain and preserve until five years after termination of the Agreement with Magnolia Science Academy, and to permit the State of California or any of its duly authorized representatives, to have access to and to examine and audit any pertinent books, documents, papers, and records related to this Agreement.

22. INSURANCE REQUIREMENTS

YMCA and Subcontractors shall, at its expense, procure and maintain for the duration of this Agreement, Public Liability and Property Damage Insurance to protect them and the District from all claims for injuries to persons, including accidental death, as well as from all claims for property damage which may arise from or in connection with the performance of the Agreement by YMCA, its agents, representatives, and employees. Such insurance shall survive after this agreement as permitted by law.

Coverage is at least as broad as:

Amounts of Insurance:

General Liability	Bodily Injury and	\$ <u>1,000,000</u>
Comprehensive form -	Property Damage	Amount
Products/Completed		

Operations

Auto Liability Comprehensive form Owned/Non-owned Hired	Bodily Injury Property Damage Combined	<u>\$1,000,000</u> Amount
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YMCA of San Diego County shall file, with MAGNOLIA SCIENCE ACADEMY, Certificates of Insurance indicating a thirty-day (30) cancellation notice and naming **Magnolia Educational & Research Foundation** as an additional insured.

23. GOVERNING LAW/VENUE SAN DIEGO

In the event of litigation, the Agreement and related matters shall be governed by and construed in accordance with the laws of the State of California. Venue shall be with the appropriate State or Federal court located in San Diego County.

24. COMPLIANCE WITH LAW

YMCA shall be subject to, and shall comply with, all Federal, State, and local laws and regulations applicable with respect to its performance under this Agreement including, but not limited to: licensing, employment, and purchasing practices, and wages, hours, and conditions of employment, including non-discrimination.

25. FINAL APPROVAL

This Agreement is of no force or effect until approved by signature by Magnolia Educational & Research Foundation CEO & Superintendent and the YMCA of San Diego County President/CEO.

26. PUPIL SAFETY / SCHOOL SAFETY ACT

Pupil Safety/School Safety Act: Magnolia Science Academy shall determine the YMCA’s level of contact with pupils from the following two (2) choices, by inserting an **X** below:

 The YMCA will have “**limited contact**” with pupils and the Contractor/Provider may be required to do one or more of the following to protect pupils:

1. Prohibit Contractor/Provider’s employees from using student restroom facilities,
2. Perform work when school is not in session,
3. Provide security patrols or supervision,
4. Restrict Contractor/Provider’s employees’ access to site grounds, and/or

5. Provide badges or other visible means of Contractor/Provider's identification.

X The YMCA will have “**greater than limited contact**” with pupils and the YMCA shall require their employees, including the employees of any subcontractor, who will provide these services, to submit their fingerprints in order to conduct a criminal background check per Education Code §45122.1. The YMCA shall not permit any employee, including the employees of any subcontractor, to perform services under this contract until:

1. The Department of Justice has determined that these employees have not been convicted of, or have charges pending for a defined felony.
2. The YMCA has **certified in writing** to Magnolia Science Academy that the employer and all of these employees have not been convicted of, or do not have charges pending for a defined felony.

Steve Hensel
 By (Authorized Signature)

7/30/20
 Date

Steve Hensel
 Executive Director
 Expanded Learning Programs
 YMCA of San Diego County

27. ENTIRE AGREEMENT

This Agreement represents the entire Agreement and understandings of the parties hereto and no writings, conversations or representations of any nature shall be deemed to vary the provisions hereof. This Agreement may not be amended in any way except by a writing duly executed by both parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be duly executed, such parties acting by their representatives being thereunto duly authorized.

MAGNOLIA SCIENCE ACADEMY

YMCA OF SAN DIEGO COUNTY

By (Authorized Signature)

By (Authorized Signature)

 Gokhan Serce
 Principal
 Magnolia Science Academy-San Diego

 Baron Herdelin-Doherty
 President/CEO
 YMCA of San Diego County

Date: _____

Date: _____

**MAGNOLIA EDUCATIONAL & RESEARCH
FOUNDATION for MAGNOLIA SCIENCE
ACADEMY-SAN DIEGO**

YMCA Federal EIN #: 95-2039198

Alfredo Rubalcava
CEO & Superintendent
Magnolia Educational & Research Foundation
Dbm Magnolia Public Schools

Date: _____