



Board Agenda Item #	II B: Action Item
Date:	March 18, 2021
To:	Magnolia Board of Directors
From:	Alfredo Rubalcava, CEO & Superintendent
Staff Lead:	Derya Hajmeirza, Director of Human Resources
RE:	COVID-19 Testing Vendor Selection

Information Item:

I move that the board approve the staff recommendation to enter into a service agreement for COVID-19 testing program with PMH Laboratory for MSA 1, 6, 7, Santa Ana, San Diego and with Los Angeles Unified Schools District for MSA 2, 3, 4, 5 and 8.

Introduction

Based on the board resolution adopted on July 23, 2020, the Board of Directors directed the following:

- The CEO is authorized to develop and implement a plan for reopening schools (the “Plan”) in Fall 2020 in accordance with guidance and/or directives from the chartering authority, and local, state or federal government officials, including, but not limited to, Relevant Authorities.
- The CEO or designee may hire additional employees or independent contractors as necessary or convenient for purposes of performing tasks recommended by Relevant Authorities or that the CEO deems necessary in their discretion to mitigate the actual or potential impacts of COVID-19.

Based on this, Mr. Rubalcava, MPS CEO and Superintendent, made the executive decision to not conduct a Request for Proposal (RFP) process for COVID testing vendor services. However, Home Office staff members compared and evaluated each vendor based on their services and cost.

Background

The COVID-19 testing vendor analysis was presented to the MPS Board on March 11, 2021 as an information/discussion item. MPS Home Office discussed these potential vendors with the MPS Principals. Principals have provided feedback and approved the recommended suggestion mentioned above.

Consistent with the board approved MPS Health & Safety Policy, the California “Safe Schools for All” Reopening Plan, and the current CA Department of Public Health (CDPH) guidance, and AB 86, MPS plans to conduct COVID-19 testing for both employees and students.

MPS anticipates to start the testing program in April 2021 on the following cadences:

- In the seven (7) days prior to the reopening of the school, all students and employees who are returning to campus will do a baseline testing, which is the initial testing before the return to campus.
- Thereafter, all students and employees continuing to be present on campus must undergo asymptomatic testing every two weeks.
- The frequency of testing will depend on the tier that the county is in and the recommendation of the school’s authorizing agencies.

Analysis

Staff recommends for LAUSD authorized schools to use LAUSD’s testing vendor due to the logistical benefits for MPS families, staff members, and school sites. LAUSD will do most of the logistical work behind the testing for the stakeholders. The school compliance task officer will work closely with the district and home office when needed.

PMH is recommended for the 5 remaining schools who are on private sites, because they provide quick response testing, they have flexible schedules for stakeholders who miss their appointments and they seek different outlets to cover testing costs. With PMH, there is no upfront cost to the schools and most of the operational demands will be handled by the vendor.

Additionally, both LAUSD and PHM perform “response testing” if someone at the school site displays COVID-19 symptoms, and is a close contact or test positive for COVID-19. Response testing may have an additional cost which is not reflected in the cost analysis on Appendix 1.

Below is the analysis for the 5 vendors that MPS Home Office previously presented.

<b>COVID-19 VENDOR SERVICES ANALYSIS</b>		
<b>VENDOR</b>	<b>SCOPE OF WORK</b>	<b>COST</b>
LAUSD	<ul style="list-style-type: none"> <li>- Turnaround time for test results is 18-48 hours</li> <li>- Nasal and saliva test through two different vendors</li> <li>- Daily Pass App for scheduling and reviewing test results</li> <li>- Testing is conducted as specified LAUSD sites</li> <li>- Extending hours at certain testing site locations, offering Saturday testing at specific sites, 5:00 am to 11:00 pm weekdays and 8:00 am to 8:00 pm on Saturdays</li> </ul>	- \$250 per person student/staff

<p>PMH Laboratory</p>	<ul style="list-style-type: none"> <li>- PMH uses an online platform to directly report all COVID test results to all health entities, results are expected within 48-72 hours.</li> <li>- PCR (nasal swab) testing type</li> <li>- The tests will be administered at the school site by a licensed health practitioner assigned by PHM.</li> <li>- Is flexible and will work with a schedule that is needed to best serve the schools.</li> <li>- Regarding rescheduling missed appointments- depending on location, there are nurses all over and a nurse can be sent to administer the test "on the go". PMH can also provide extra testing kits in case of an outbreak and/or exposure</li> </ul>	<ul style="list-style-type: none"> <li>- \$100 after test is administered</li> <li>- No upfront cost or co-pay. If any test is non-reimbursable, PMH will charge after test is administered</li> </ul>
<p>COVERIFY</p>	<ul style="list-style-type: none"> <li>- Will report results to local health authority departments - SMS notification to faculty/staff/parents of students when test results are available - HIPAA compliant web portal for accessing results</li> <li>- Coverify administers the test at each MPS site with their own staff and material</li> <li>- MPS is responsible for setting up the testing area.</li> </ul>	<ul style="list-style-type: none"> <li>- \$45-55 RT-PCR Saliva Test -</li> <li>- Payment must be made up front. All tests for students and staff must be paid and then reimbursed.</li> <li>- Coverify will leverage all available options for reimbursements.</li> <li>- There is a one time administrative test fee of \$5,205 per site (over 400 students/staff) or \$3,325 per site (under 400 students/staff)</li> </ul>
<p>UCSD</p>	<ul style="list-style-type: none"> <li>- Turn around time for test results is 24-48 hours</li> <li>- Test Results are provided via a URL to the parent or directly to staff members. MPS admin will not have access to the results unless the patient directly screen shots the results to.</li> <li>- Appointments can be made via this URL for appointments</li> <li>- There are three different options. Drive thru, onsite testing, self administered</li> <li>- Drive up is convenient since it is on staff's own time, they drive up to the university.</li> <li>- Self administered- MPS has to have a certified medical staff to order the kits, administer them and drop them off.</li> <li>- They only test every other week</li> <li>- They do not conduct any reimbursements or check insurance coverage</li> </ul>	<ul style="list-style-type: none"> <li>- Drive up is \$40 per test</li> <li>- Onsite testing conducted by UCSD is \$40</li> <li>- Sister lab or self-administered on campus is \$28 per test</li> </ul>
<p>VALENCIA LAB</p>	<ul style="list-style-type: none"> <li>- Turn around time for test results is 24-48 hours</li> <li>- Patients with positive test results who do not check their test results on the Color website will receive up to 10 autodial attempts from the state's clinical call center within 48 hours to ensure they receive their test results</li> <li>- MPS is responsible for the collection of the sample, setting up the collection site, staffing for collection, and taking the samples to the drop off locations.</li> </ul>	<ul style="list-style-type: none"> <li>- \$21 per test kit for privately insured and/or uninsured student</li> <li>- Insured staff are covered through their insurance, uninsured are covered via COVID-19 uninsured program</li> <li>- Students with Medical are covered through state funds</li> <li>- Valencia bills MPS based on the used kits</li> </ul>

Exhibit A shows the cost analysis per school based on the estimated percentage of the students returning in person. The cost will also vary depending on the frequency of the testing as counties move into different California COVID-19 tiers.

#### Budget Implications

Assembly Bill (AB) 86, approved on March 5, 2021 provides \$2 billion for safe in-person instruction support and \$4.6 billion for expanded academic, mental health and social-emotional support. Beginning April 1st, these funds will be allocated to all local educational agencies (LEAs) based on 2020-21 LCFF (Local Control Funding Formula) entitlements.

This bill will pay for COVID-19 testing for all MPS schools. We are projected to receive \$350 to \$450 per student. Further budget analysis is attached to this document as Appendix 1.

#### Legal Review:

All agreements have been reviewed by the MPS general counsel.

#### Exhibits (attachments):

Appendix 1: Cost Comparison Chart

Appendix 2: LAUSD MOU

Appendix 3: PMH Laboratory MOU

# Appendix I

TIER	STUDENTS						TEACHERS/STAFF			TESTS	COVERIFY					PMH		LAUSD			VALENCIA		UCSD (\$40/TEST)		UCSD (\$28/TEST)		
	AS OF 03.17.21	TOTAL # OF STUDENTS	% of Parents reporting that their students will choose in person instruction	2019 Census data of 65 yrs or younger uninsured	# OF UNINSURED STUDENTS	# OF INSURED STUDENTS	# STAFF WITH KAISER	# STAFF WITHOUT KAISER	TOTAL # NUMBER OF STAFF		TOTAL NUMBER OF TESTING WEEKS (1 base line)	TEST FEE PER TEST	ADMINISTRATIVE FEE	COVERIFY ALL STUDENTS COST	STAFF COST (Without Insurance \$55 max cost shown here)	MPS TO BE REIMBURSED BY COVERIFY (If they can reimburse from any source they will reimburse us, if they can't they will not reimburse)	COVERIFY TOTAL COST	TEST FEE PER TEST	PMH TOTAL COST (Only students without a social security #, we got uninsured column)	LAUSD TEST FEE FOR 1 SCHOOL YEAR-FIXED REGARDLESS OF # WEEKS	ADMINISTRATIVE FEE	LAUSD TOTAL COST	TEST FEE PER TEST	TOTAL COST (Only students without Medical, we got uninsured column)	TEST FEE PER ONE TEST	TOTAL COST	TEST FEE PER ONE TEST
MSA 1	RED	717	70.00%	14.20%	102	615	45	19	64	7	\$55	\$5,205	\$193,232	\$7,315	\$165,793	\$39,959	\$100.00	\$49,888.86	\$250.00	\$0.00	\$195,250	\$21.00	\$10,476.66				
MSA 2	RED	466	70.00%	14.20%	66	400	33	6	39	7	\$55	\$5,205	\$125,587	\$2,310	\$107,754	\$25,348	\$100.00	\$32,424.28	\$250.00	\$0.00	\$126,250	\$21.00	\$6,809.10				
MSA 3	RED	416	70.00%	9.30%	39	377	35	5	40	7	\$55	\$5,205	\$112,112	\$1,925	\$101,686	\$17,556	\$100.00	\$18,957.12	\$250.00	\$0.00	\$114,000	\$21.00	\$3,981.00				
MSA 4	RED	100	70.00%	14.20%	14	86	13	2	15	7	\$55	\$3,325	\$26,950	\$770	\$23,123	\$7,922	\$100.00	\$6,958.00	\$250.00	\$0.00	\$28,750	\$21.00	\$1,461.18				
MSA 5	RED	291	70.00%	14.20%	41	250	23	2	25	7	\$55	\$3,325	\$78,425	\$770	\$67,288	\$15,231	\$100.00	\$20,247.78	\$250.00	\$0.00	\$79,000	\$21.00	\$4,252.03				
MSA 6	RED	161	70.00%	14.20%	23	138	11	1	12	7	\$55	\$3,325	\$43,390	\$385	\$37,228	\$9,871	\$100.00	\$11,202.38	\$250.00	\$0.00	\$43,250	\$21.00	\$2,352.50				
MSA 7	RED	294	70.00%	14.20%	42	252	24	6	30	7	\$55	\$3,325	\$79,233	\$2,310	\$67,982	\$16,886	\$100.00	\$20,456.52	\$250.00	\$0.00	\$81,000	\$21.00	\$4,295.87				
MSA 8	RED	441	70.00%	20.70%	91	350	33	9	42	7	\$55	\$5,205	\$118,850	\$3,465	\$94,248	\$33,272	\$100.00	\$44,730.63	\$250.00	\$0.00	\$120,750	\$21.00	\$9,393.43				
MSA SA	RED	544	70.00%	19.00%	103	441	44	9	53	7	\$55	\$5,205	\$146,608	\$3,465	\$118,752	\$36,526	\$100.00	\$50,646.40				\$21.00	\$10,635.74				
MSA SD	RED	438	70.00%	9.80%	43	395	24	8	32	7	\$55	\$5,205	\$118,041	\$3,080	\$106,473	\$19,853	\$100.00	\$21,032.76				\$21.00	\$4,416.88	\$40.00	\$94,808	\$28.00	\$66,366
HOME O.	RED	0	0.00%	0.00%	0	0	24	0	24	7	\$55	\$5,205	\$0	\$0	\$0	\$5,205	\$100.00	\$0.00				\$21.00	\$0.00	\$40.00	\$6,720	\$28.00	\$4,704

TIER COLOR	Testing Frequency	Per	WHO TO TEST %			TESTING COST PER TIERS WITH SELECTED VENDORS PER EACH SITE											TOTALS PER TIER	SELECTION UNDER CURRENT TIER (***)
			STAFF	VENDORS	STUDENTS	MSA 1	MSA 2	MSA 3	MSA 4	MSA 5	MSA 6	MSA 7	MSA 8	MSA SA	MSA SD			
						PMH	LAUSD	LAUSD	LAUSD	LAUSD	PMH	PMH	LAUSD	PMH	PMH			
PURPLE	1	2 weeks	100%	100%	100%	\$49,888.86	\$126,250	\$114,000	\$28,750	\$79,000	\$11,202.38	\$20,456.52	\$120,750	\$50,646.40	\$21,032.76	\$621,976.92		
RED	1	2 weeks	100%	100%	100%	\$49,888.86	\$126,250	\$114,000	\$28,750	\$79,000	\$11,202.38	\$20,456.52	\$120,750	\$50,646.40	\$21,032.76	<b>\$621,976.92</b>	<b>***</b>	
ORANGE	1	2 weeks	100%	100%	20%	\$9,977.77	\$126,250	\$114,000	\$28,750	\$79,000	\$2,240.48	\$4,091.30	\$120,750	\$10,129.28	\$4,206.55	\$499,395.38		
YELLOW	1	2 weeks	20%	20%	20%	\$9,977.77	\$126,250	\$114,000	\$28,750	\$79,000	\$2,240.48	\$4,091.30	\$120,750	\$10,129.28	\$4,206.55	\$499,395.38		

\*\*The calculation is based on the 70% assumption of student in person return

# Appendix II

**ATTACHMENT A**

**FUNDAMENTAL PROVISIONS**

**COVID TESTING AND COMMUNITY ENGAGEMENT SERVICES AGREEMENT**

**CONTRACT # \_\_\_\_\_**

The following fundamental provisions are incorporated into the COVID Testing and Community Engagement Services Agreement (“Agreement”). The provisions shall have the following meanings throughout the Agreement.

(a) LAUSD or District:	Los Angeles Unified School District, a unified school district existing under the laws of the State of California.
(b) Operator:	_____ operating that charter school known as _____ (“Charter School”), a California Charter School.
(c) School Site:	Charter School’s location on the following District School Site: _____.
(d) Term:	The Term of this Agreement shall commence on the last date of signature below, and expire on Charter School’s last day of instruction for the 2020-2021 school year or <b>June 30th, 2021</b> , whichever is sooner, unless terminated otherwise as outlined in this Agreement.
(e) Charter School’s Address for Notices:	_____ _____ _____ ATTN: _____ Phone No.: _____ Email Address: _____
(f) LAUSD’s Address for Notices:	Los Angeles Unified School District 333 South Beaudry Avenue Los Angeles, California 90017 ATTN: _____ Phone No.: _____ Email Address _____
(g) Fee	\$250 per individual tested per year



**COVID TESTING AND COMMUNITY ENGAGEMENT SERVICES AGREEMENT**

BY AND BETWEEN

**LOS ANGELES UNIFIED SCHOOL DISTRICT,**  
A UNIFIED SCHOOL DISTRICT DULY ORGANIZED AND EXISTING UNDER THE  
LAWS OF THE STATE OF CALIFORNIA,

AND

\_\_\_\_\_  
OPERATING THAT CHARTER SCHOOL KNOWN AS  
\_\_\_\_\_ **CHARTER SCHOOL,**  
A CALIFORNIA CHARTER SCHOOL

## COVID TESTING AND COMMUNITY ENGAGEMENT SERVICES AGREEMENT

This COVID Testing and Community Engagement Services Agreement (“Agreement”) is made and entered into as of the last date of the full execution of this Agreement (the “Effective Date”), by and between the Los Angeles Unified School District, a school district duly organized and existing under the laws of the State of California (“LAUSD” or “District”), and \_\_\_\_\_, operating that charter school known as \_\_\_\_\_ (“Charter School”) (collectively referred to herein as the “Parties,” and individually referred to herein as a “Party”), with reference to the following:

### RECITALS

WHEREAS, LAUSD is the owner of and operates public schools to provide a public education to those students residing within its jurisdictional boundaries;

WHEREAS, in response to the COVID-19 pandemic, LAUSD has implemented a COVID Testing and Community Engagement Services (“DISTRICT COVID TESTING SERVICES”) program to provide the highest standard of safety measures at schools;

WHEREAS, Charter School has chosen to avail itself of DISTRICT COVID TESTING SERVICES for the benefit of Charter School’s students and staff;

NOW, THEREFORE for good consideration had and received, and the mutual covenants and obligations contained herein, the Parties agree as follows:

#### ARTICLE 1. DISTRICT RESPONSIBILITIES

DISTRICT shall comply with the responsibilities set forth in EXHIBIT “A,” which is attached hereto and made a part hereof.

#### ARTICLE 2. CHARTER SCHOOL RESPONSIBILITIES:

Charter School shall comply with the responsibilities set forth in EXHIBIT “B,” which is attached hereto and made a part hereof.

#### ARTICLE 3. COSTS AND PAYMENTS

3.1 DISTRICT’S CHARGE TO CHARTER SCHOOL. The \$250 per person charge, set forth in Section (g), is an all-inclusive fee covering the cost of the test, test administration, and follow up community engagement for the school year.

3.2 INVOICE. DISTRICT shall provide Charter School an itemized written invoice no later than the 15th day of each month, covering the number of new test subjects enrolled in the prior full month (“Invoice”). Alternatively, upon mutual agreement of the parties, DISTRICT may invoice Charter School at the start of the Agreement for the entire Agreement period. DISTRICT

reserves the right to adjust prices to reflect changing conditions and costs of service, upon sixty (60) days' advance written notice to Charter School. DISTRICT shall deliver the Invoice to Charter School's address set forth in section (e) of the Fundamental Provisions of this Agreement.

3.3 PAYMENT. Charter School shall pay DISTRICT by check within thirty (30) days following the receipt of the Invoice. If Charter School fails to timely pay any portion, the unpaid amounts shall bear interest at the lesser of: (i) the rate publicly announced from time to time by the largest (as measured by deposits) chartered bank operating in California, as its prime rate, reference rate or other similar benchmark rate, plus two percent (2%), or (ii) the maximum rate then allowed by law ("Interest Rate") from the date such amount is due until the date paid, compounded daily. Charter School shall submit payment to DISTRICT's lockbox address as set forth in the invoice. If Charter School does not remit payment to LAUSD within thirty (30) days of Charter School's receipt of the Invoice, DISTRICT may, in addition to pursuing any other legal and/or equitable remedies to which DISTRICT may be entitled, immediately stop providing all COVID Testing services as set forth in EXHIBIT "A," until and unless payment, with applicable interest, is made in full.

If Charter School fails to either timely pay or deposit disputed payments into escrow pursuant to Article 3.4 below and provide timely notice to the District, the District shall provide Charter School with a notice of non-payment and Charter School shall have (15) days from the date of receipt of the notice to respond. If Charter School does not either make payment or dispute payment per Article 3.4 below, Charter School authorizes and the District shall have the right, but not the obligation, to deduct the outstanding payment amount from the Charter School's Monthly Revenue Source Allocation account. Notwithstanding anything else in this Article 3.3, Charter School shall have the option to request the District to deduct Charter School's payment from the Charter School's Monthly Revenue Source Allocation account by submitting a request to the District's Charter School Accounting Office.

3.4 PAYMENT DISPUTES. If Charter School disputes all or any part of the Invoice, Charter School shall pay the undisputed portion of the charges, and shall deposit the disputed amount into escrow with an escrow company authorized to do business in the state of California or otherwise mutually agreed between the Parties, at Charter School's expense. The Parties agree to first attempt to resolve such disputes pursuant to the dispute resolution provisions in Charter School's approved charter petition, if any. The disputed amount shall remain in escrow until the payment dispute is resolved either through the dispute resolution process or by a final judgment from a court of competent jurisdiction. Any interest accrued on the escrowed funds shall be allocated to the Parties proportional to the same percentage the disputed payment amount is allocated at the resolution of the dispute.

In such instance where Charter School disputes its obligations to pay all or part of the invoiced amount, Charter School shall provide LAUSD with a notice entitled "Payment Under Protest" stating that Charter School plans to dispute such payment, with proof of deposit of funds into escrow provided by the escrow company. The Payment Under Protest notice shall be provided to LAUSD by the date that payment would have been due. Within thirty (30) days following the payment due date, Charter School shall provide another notice to LAUSD specifying in detail why Charter School is not required to pay all or part of such amount.

ARTICLE 4. TERMINATION

This Agreement may be terminated by either Party upon providing thirty (30) days' written notice of intent to terminate to the other Party. COVID TESTING SERVICES will be provided by the DISTRICT, and payments by Charter School will remain due and owing, for the notice period. Termination of this Agreement will not absolve Charter School of any outstanding payment obligations.

ARTICLE 5. INDEPENDENT CONTRACTOR RELATIONSHIP

LAUSD and Charter School intend and hereby agree and acknowledge that the relationship between LAUSD and Charter School is solely an independent contractor type relationship, and not a principal/agent, partnership, joint venture, employment or master/servant relationship. Charter School and LAUSD are acting on their own behalf and neither is operating as an agent of the other.

ARTICLE 6. COMPLIANCE WITH LAWS AND REGULATIONS

Charter School acknowledges that, due to the unprecedented nature of the COVID-19 pandemic, public health guidance issued by regulatory authorities has been changing rapidly. LAUSD shall use its best efforts to comply with all federal, State and local laws and regulations at all times in the provision of services under this Agreement.

ARTICLE 7. GENERAL PROVISIONS

7.1 NOTICES. Except where otherwise indicated in this Agreement, any notice or communication required or permitted hereunder shall be given in writing, sent by (a) personal delivery by a representative of the Party giving such notice, or (b) overnight delivery by recognized overnight courier, or (c) United States mail, postage prepaid, registered or certified mail, or (d) facsimile or email (provided that the same shall be followed by delivery of a copy by one of the other permitted means of delivery). Any such notice or communication shall be deemed to have been delivered either at the time of personal delivery actually received by the addressee or a representative of the addressee at the address provided above; or, in the case of delivery service or certified or registered mail, as of the earlier of the date delivered or the date forty-eight (48) hours following the date deposited in the United States mail, at the address provided herein; or, if by facsimile or email, upon electronic confirmation of receipt. LAUSD and Charter School hereby agree that notices may be given hereunder by the Parties' respective legal counsel and that, if any communication is to be given hereunder by LAUSD's or Charter School's legal counsel, such counsel may communicate directly with all principals as required to comply with the provisions of this Article.

7.2 GOVERNING LAW. This Agreement shall be governed by the laws of the State of California without regard to principles of conflict of law.

7.3 ENTIRE AGREEMENT/AMENDMENT. All Exhibits and Attachments are hereby fully incorporated into this Agreement. This Agreement contains all of the agreements of the Parties with respect to the matters covered hereby, and no prior agreements, oral or written, or understandings or representations of any nature whatsoever pertaining to any such matters shall be effective for any purpose unless expressly incorporated into the provisions of this Agreement. The provisions of this Agreement shall not be amended or altered except by an instrument in writing signed by both Parties.

7.4 WAIVER. No waiver of any provision hereof shall be deemed a waiver of any other provision hereof. Consent to or approval of any act by one of the Parties hereto shall not be deemed to render unnecessary the obtaining of such Party's consent to or approval of any subsequent act, nor shall any custom or practice which may grow between the Parties in the administration of the terms hereof be deemed a waiver of, or in any way affect, the right of LAUSD to insist upon the performance by Charter School in strict accordance with said terms.

7.5 ASSIGNMENT. This Agreement shall not be assigned to any other person or entity. Subject to the provisions hereof relative to assignment, this Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, transferees, successors and assigns of the respective Parties hereto.

7.6 TIME IS OF THE ESSENCE. Time is of the essence with respect to the performance or observance of each of the obligations, covenants, and agreements under this Agreement.

7.7 INVALIDITY / SEVERABILITY. If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

7.8 CAPTIONS. The captions and headings of this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope of this Agreement or the intent of any provision hereof.

7.9 COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument. A telefaxed or .pdf signature received via email shall have the same effect as an original wet signature.

7.10. FORCE MAJEURE. Whenever either Party hereto shall be required by the terms of this Agreement or by law to perform any act, work, labor, or services, or to perform and comply with any laws, rules, orders, ordinances, regulations, or zoning regulations, said Party shall not be deemed to be in default herein and the other Party shall not enforce or exercise any of its rights under this Agreement, if and so long as nonperformance or default herein shall be directly caused by strikes, unavailability of materials, war or national defense preemptions or civil disobedience,

governmental restrictions, alien invasion, or other similar causes beyond the reasonable control of the non-performing Party.

7.11 AUTHORIZATION TO SIGN AGREEMENT. If Charter School is a corporation, each individual executing this Agreement on behalf of Charter School represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of Charter School in accordance with a duly adopted resolution of Charter School’s Board of Directors, and that this Agreement is binding upon Charter School in accordance with its terms. If Charter School is a partnership or trust, each individual executing this Agreement on behalf of Charter School represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of Charter School in accordance with the terms of such entity’s partnership agreement or trust agreement, respectively, and that this Agreement is binding upon Charter School in accordance with its terms, and Charter School shall, concurrently with its execution of this Agreement, deliver to LAUSD upon its request such certificates or written assurances from the partnership or trust as LAUSD may request authorizing the execution of this Agreement. Each individual executing this Agreement on behalf of LAUSD represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of LAUSD and this Agreement is binding upon LAUSD in accordance with its terms.

7.12 CONTACT. Questions, concerns, or issues regarding the COVID TESTING SERVICES should be addressed to Mr. Eugene Hernandez, Executive Director, COVID Response, at eugene.hernandez@lausd.net.

ARTICLE 8. CONFIDENTIALITY.

The District shall maintain the confidentiality of all Charter School test subject protected health information in compliance with applicable HIPAA regulations and other applicable privacy laws.

ARTICLE 9. INDEMNITY.

Charter School shall indemnify, defend and hold harmless the District and its Board Members, administrators, employees, agents, attorneys, and contractors (collectively, “Indemnitees”) against all liability, loss, damage and expense (including reasonable attorneys’ fees) resulting from or arising out of this Agreement or Charter School’s performance, whether such loss, expense, damage or liability was proximately caused in whole or in part by the negligent or willful act or omission by Charter School, including, without limitation, its agents, employees, subcontractors or anyone employed directly or indirectly by it.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement:

LAUSD:

LOS ANGELES UNIFIED SCHOOL DISTRICT

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

Date: \_\_\_\_\_

CHARTER SCHOOL:

XXXXXXXXXX SCHOOL

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT "A"**  
**DISTRICT RESPONSIBILITIES**

DISTRICT shall provide the following COVID-19 testing and community engagement services:

1. "Gold-standard" polymerase chain reaction (PCR) testing regimen, including, but not limited to, laboratory test kits, sample collection, transportation of samples to lab, sample processing, and delivery of results to test State and local health officials and test subjects. The turnaround from test to result is estimated to be between 18 and 48 hours. SummerBio LLC (providing "gold standard" RT-qPCR COVID-19 nasal sample test) and Clinical Reference Laboratory, Inc. (providing saliva-based molecular test) are currently engaged to provide laboratory testing services. Additional laboratory test providers providing comparable services may be engaged at the discretion of the District.
2. Test administration by staff of specially trained health care professionals
3. Guidance to Charter School in exposure management
4. General medical oversight by a qualified physician
5. Test registration services, which may include access to an app or web portal.

Additional details on the COVID Testing Program operations are available in the District COVID-19 Testing Policy, BUL-XXX.XX, dated ( ), available here [insert URL].



**EXHIBIT “B”  
CHARTER SCHOOL RESPONSIBILITIES**

Charter School shall:

1. Provide DISTRICT with the number of the students enrolled in the 2019-20 school year, and the number of students and staff who will participate in the COVID-19 TESTING SERVICES program in the 2020-21 school year, using the attached COVID-19 Testing Services Enrollment form. Charter School may request to adjust its numbers up or down once per year by submitting a written request to DISTRICT. DISTRICT shall make reasonable efforts to implement the adjustments within 30 days of the request.
2. Cooperate with District staff to register test subjects.
3. Remit timely payment of COVID TESTING SERVICES Fees to the District as set forth in Section 3.3 of the Agreement.

COVID-19 Testing Services Enrollment

	<b>2019-20 (for informational purposes only)</b>	<b>2020-21</b>
<b>Enrollment</b>		
<b>Employees</b>		
<b>TOTAL</b>		
<b>Multiplied by:</b>		\$250
<b>FEE for COVID-19 Testing and Community Engagement</b>		

# Appendix III

## **BUSINESS AGREEMENT**

This Business Agreement (“AGREEMENT”) is made and entered into effective as of the 24<sup>th</sup> day of November 2020, by and between Magnolia Education and Research Foundation, a California non-profit, located at 250 E. 1<sup>st</sup> St., Ste 1500, Los Angeles, CA 90012 (MERF), and PMH Laboratory, Inc. a California Corporation with address of 5862 Edinger Ave, Huntington Beach, CA 92649 (“PMH”).

### **Recitals:**

WHEREAS, MERF is a non-profit organization which provides educational services throughout California, who wishes to seek out COVID-19 testing for their student body, employees and families for their benefit and mutual protection;

WHEREAS, PMH is a diagnostic laboratory accredited by COLA Inc. and certified under the Clinical Laboratory Improvement Act (“CLIA”);

WHEREAS, PMH maintains all licenses and/or certifications, as applicable, to provide COVID-19 antibody and molecular screening tests;

WHEREAS, PMH provides Clinical diagnostic laboratory COVID-19 testing services and provides reliable results to Clients;

WHEREAS, MERF desires, to contract with PMH to provide their student body, employees and families COVID-19 testing upon the terms and conditions herein set forth;

WHEREAS, PMH desires to provide nursing, phlebotomy and laboratory services to process COVID-19 tests conducted at various MERF locations; and

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

### **SECTION I**

**Definitions:** The following terms used in this Agreement are defined as follows:

1. “Client” or “Clients” refers to the student body, employees and families of MERF to receive testing services.
2. “IgG/IgM Antibody” refers to COVID-19 testing to test for the presence of antibodies to COVID-19.
3. “RT-PCR” refers to real-time reverse transcription polymerase chain reaction testing to test for the presence of COVID-19 antigens.

4. "Patient" refers to the person or persons who undergoes the COVID-19 testing at any of Client's locations.
5. "Insurance" refers to the Patient's health insurance plan, government sponsored entity, or any other entity responsible for payment for the COVID-19 testing on behalf of Patient.
6. "Management System" refers to the data/client system where the information specific to the testing, Patient, Patient's insurance, date of service, location of service, and any other relevant data are entered into.
7. "State licensed doctor" refers to any physician contracted by PMH to provide standing orders for the RT-PCR and/or IgG/IgM Antibody tests and/or physician contracted by PMH to be responsible for conveying test information to the Patient and/or notifying the appropriate public health authorities.
8. "Lab Scientist" refers to the PMH scientist responsible for handling test information and working with Clients and the appropriate public health authorities.
9. "Clinic" refers to the agreed upon venue and terms with Client including the type of testing (e.g., IgG/IgM Antibody and /or RT-PCR), quantity for each type of testing, turnaround time for results, specific locations, dates, and logistics for the testing between MERF and Client.

## **SECTION II**

### **1. Division of Authority and Responsibility.**

MERF will confirm with PMH, the Clinic where testing services will be performed. This Agreement will be initiated for each Client when MERF and PMH confirm with each other in writing (preferably email with reservation form) to provide their respective services to Client in accordance with MERF's responsibilities and PMH's responsibilities as delineated in Section II (1)(a) and (1)(b) and as otherwise provided in this Agreement.

#### **(a) *MERF's Responsibilities.***

1. Handle all scheduling for the Clinic(s) with the Client(s). This includes but is not limited to; finding a place to hold the Clinic, scheduling the Patients/Clients on an agreed upon time slot so that social distancing can be maintained, informing PMH of the basic needed demographic information for each Patient to be tested (ie name, test forms and spread-sheet for test times). Following up with patients to assure their presence at the Clinic for testing.

2. Confirm appointment(s) with PMH.
3. Assist with communications with Client(s) and Clinic(s).
4. Introduce PMH to the entity liaison/point of contact at each Clinic location (ie. School).
5. Assist with gathering needed information, signed contracts, patient forms, insurance billing information and execution thereof.

(b) ***PMH's Responsibilities.***

1. Create Master Clinic List and incorporate Clinics on Master Excel spreadsheet.
2. Create online appointment scheduling for Client.
3. Confirm appointment(s) with Client(s).
4. Order and pay for dry supplies (e.g., gloves, needles, band aids, cotton balls, and tourniquets)
5. Obtain and prepare shipping labels to Client, staffing agencies, or nurses.
6. Ship supplies to Client and/or nurses or staffing agencies.
7. Provide nurse(s), medical assistant's and/or phlebotomist(s) to be onsite and procure testing.
8. Contract with Staffing Agencies if needed.
9. Train nurse(s) and/or phlebotomist(s) with regard to conducting testing at Clinics.
10. Ensure Patient completes consent forms, demographic questions, and contact information, and provides insurance information and copy of government-issued identification cards.
11. Pack and prepare boxes for delivery of testing samples to PMH.
12. Get samples to PMH timely to accomplish Client's turnaround time taking into account PMH's processing time set forth in (b)(3) below.
13. Pay box packing staff, Staffing Agencies and or nurses/phlebotomists, and nurse coordinators.
14. Maintain insurance requirements as per Section III (1)

15. Enter Patients' data information into management system within twenty-four hours of receiving samples.
16. Process and move final test results entered into Management System within five (5) business days of receiving samples.
17. Bill Patient's insurance, third party, or Patient within ten (10) business days of receiving samples.
18. Ensure that the ordering provider(s) reviews all RT-PCR and/or IgG/IgM Antibody results.
19. Ensure that the PMH lab scientist or state licensed doctor will review all lab results and comply with all state and other mandates, regulations and guidelines including, but not limited to, reaching out to Patient within Seventy-two (72) hours of receiving any positive results for either the IgG/IgM Antibody and/or RT-PCR testing.
20. Within twenty-four (24) hours and/or as directed by the applicable public health regulations or agencies, notify the state licensed doctor or as directed by the applicable public health regulations or agencies, positive results of RT-PCR and /or IgG/IgM Antibody testing.
21. Report all results to local health department and/or as directed by the applicable public health agencies or regulations.
22. Pay all PMH personnel, staff, vendors, independent contractors, state licensed doctor and/or telemedicine consultants and any other person PMH hires.
23. Obtain all required permits from State or Local authorities to provide the services to the Clients under this Agreement and provide professionals trained and, if applicable, certified to provide all such testing. By commencing such testing PMH represents and warrants that it has obtained or is exempt from obtaining any permits and is providing appropriate personnel to perform the services under this Agreement.

## **2. Financial Arrangement**

The parties agree that MERF will NOT be charged for the testing clinics unless the person being tested is both uninsured and undocumented. If a person being tested is both uninsured and undocumented, parties agree that PMH will be paid a cash price of \$100 per test by MERF within 45 days of testing.

Otherwise, reimbursement for the services provided by PMH will be solely through billing of the Patient's (student body, employee and/or family members) various health insurance companies.

If a patient does not have health insurance PMH agrees to seek reimbursement through the non-insured program in the CARES act. Furthermore, PMH will not charge a co-pay for any reason to any Patient.

### **3. Expenses and Costs of Testing**

PMH agrees to pay the expenses and costs of testing. In summary, payments for out of pocket expenses and costs are as follows: PMH will pay for staffing, testing materials, packing test sample boxes and shipping test samples. PMH will pay for IgG and IgM slides, RT-PCR tests, laboratory equipment, standing orders for each state, telemedicine and state licensed doctor consultation fees.

The expenses and costs are detailed as follows:

- (a) PMH will pay:
  - (i) Shipping via UPS, FedEx or other shipping method of test samples.
  - (ii) Gas and mileage for delivery of test samples.
  - (iii) Delivery drivers.
  - (iv) Supplies (e.g., gloves, needles, band aids, cotton balls, and tourniquets)
  - (v) Nurse and phlebotomist staffing for nurses and phlebotomists who are independent contractors and Staffing Agencies.
  - (vi) Online scheduling software.
  - (vii) Nurse coordinator.
  - (viii) Sharps disposal.
  - (ix) Staff to pack supplies and ship boxes.
  - (x) Envelopes.
  - (xi) Stamps.
  - (xii) Hotel expenses for staff.
  - (xiii) Rental car for staff.
  - (xiv) Standing laboratory orders for each state.
  - (xv) Additional city or state licensing fees.
  - (xvi) Staffing for printing and sending test results to patients.
  - (xvii) Biller for insurance, third party and Patient invoices.
  - (xviii) All material for RT-PCR testing.
  - (xix) CLS Labor at 5862 Edinger Ave., Huntington Beach, CA 92649 and other PMH lab addresses.
  - (xx) Laboratory outsourcing samples to other laboratories (e.g., Gen X).
  - (xxi) Instrument supplies.
  - (xxii) Excel expert (e.g. Michael McConnell).
  - (xxiii) Reagent costs.
  - (xxiv) Data entry labor.
  - (xxv) Maintenance of all equipment and machines for IgG/IgM Antibody and RT-PCT



- testing.
- (xxvi) Courier services.
- (xxvii) 15% growth expense to service clientele, inclusive of hiring personnel, administrative costs, equipment/software upgrades, etc.
- (xxviii) Telemedicine and state licensed doctor consultation fees (not to exceed \$50 per Patient).

## **SECTION III**

### **1. Insurance and Indemnification**

As an express condition to Agreement becoming effective and remaining effective, PMH will maintain and comply with the insurance requirements set forth on Exhibit A. Each party (the “Indemnifying Party”) agrees to defend all claims of loss, indemnify and hold harmless the other party (the “Indemnified Party”) and its officers, agents, representatives and employees from any and all liability for personal injury (including injury due to contacting COVID-19), damages, wrongful death or other losses and costs, including but not limited to reasonable attorney fees and defense costs or workers compensation claims, arising out of the breach of the Agreement by the Indemnifying Party or negligent acts or omissions or willful misconduct of the Indemnifying Party or its employees, officers, agents or representatives in the performance of this Agreement.

### **2. Protected Health Information**

(a) The parties agree to not use or disclose Protected Health Information other than as required by law per 45 CFR 164.501.

(b) The parties agree to use appropriate safeguards to prevent use or disclosure of Protected Health Information.

(c) The parties agree to mitigate, to the extent practicable, any harmful effect that is known of a use or disclosure of Protected Health Information in violation of the Standard for Privacy of Individually Identifiable Health Information as per CFR part 160 and part 164, subparts A and E.

(d) Both parties agree to report as required by law any use or disclosure of Protected Health Information not provided by this Agreement.

(e) Both parties agree to document such disclosures of Protected Health Information and information related to such disclosures as would be required for either or both parties to

respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

(f) The parties agree to take such action as is necessary to amend this section from time to time as is necessary for both parties to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

(g) The respective rights and obligations of both parties of this section shall survive the termination of this Agreement.

(h) Any ambiguity in this Agreement shall be resolved to permit each party to comply with the Privacy rule.

### **3. Term and Termination.**

This Agreement shall be for a term of one (1) year commencing on November 24, 2020. This Agreement may be terminated at any time, without cause, by giving the other party at least thirty (30) days' advance written notice, in which event this Agreement shall terminate on the future date specified in such notice. In addition, in the event of default by a party of any covenant or obligation hereof, which default is not cured within fifteen (15) days after receipt of written notice from the non-defaulting party describing such default (unless such default is not reasonably capable of being cured, if curable, within such 15 days then if the defaulting party fails to commence the curing of such default within such 15 days or thereafter fails to complete such cure within a reasonable time), the non-defaulting party may terminate this Agreement upon the giving of written notice of such termination.

### **4. Confidentiality of Business Records; Medical Files and Patient Records.**

(a) All business records of any type or description created, used, disclosed to or otherwise learned by either party as a result of this Agreement shall be deemed to be confidential and proprietary information, and both parties agree that neither shall reveal, publish, communicate or otherwise disclose such information to a third party without the other party's prior written consent or process of law.

(b) In performing services hereunder, both parties warrant and agree they will make every reasonable effort to ensure that the services rendered hereunder shall fully comply with all applicable federal, state and local laws, rules and regulations. Specifically, but not by way of limitation, both parties warrant and agree they will make every reasonable effort to ensure its provision of services rendered hereunder shall comply with requirements imposed by the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA") and will take such

actions as are necessary and appropriate in connection therewith, including, but not limited to the execution of additional agreements or arrangements with any other parties or entities relating to this Agreement.

## **5. Employee/Independent Contractor Status.**

(a) In the performance of the duties and obligations of the parties under this Agreement, it is mutually understood and agreed that PMH's agents, staff, employees, business associates and independent contractors shall be, and at all times are, acting and performing as employees or independent contractors of PMH and all payments for salaries, benefits, withholdings or otherwise for such are the responsibility of PMH.

(b) In the performance of the duties and obligations of the parties under this Agreement, it is mutually understood and agreed that MERF's agents, staff, employees, business associates and independent contractors shall be, and at all times are, acting and performing as employees or independent contractors of MERF and all payments for salaries, benefits, withholdings or otherwise for such as the responsibility of MERF.

(c) The parties hereto are independent entities and nothing in this Agreement shall be construed to constitute either party as a partner, agent, employee or joint venturer of the other party in the performance of the duties and obligations contemplated herein.

## **6. Governing Law.**

This Agreement will be governed by the laws of the State of California.

## **7. Entire Agreement.**

This Agreement supersedes all prior agreements and understandings, whether written or oral, between the parties regarding the subject hereof and this Agreement constitutes the entire agreement of the parties regarding the subject hereof. No change or amendment of any of the terms or provisions hereof shall be binding unless in writing and signed by the party against whom the same is sought to be enforced.

## **8. Severability.**

The provisions of this Agreement are severable. If any one or more of the provisions of this Agreement are held invalid by any court of competent jurisdiction or are voided or nullified for any reason, the remaining provisions and paragraphs shall continue in full force and effect and shall be binding on the parties so as to carry out the intent and purposes as nearly as possible; provided, however, that any final determination of invalidity which eliminates or minimizes the consideration due to either party hereunder shall entitle such party to terminate this Agreement.

**9. Binding Effect and Assignment.**

This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. Neither party hereto may delegate its duties or assign its rights hereunder without the prior written consent of the other party.

**10. Waiver.**

No waiver of any provision of this Agreement shall operate or be construed as a waiver of any other provision.

**12. Notices.**

All notices, requests, demands, and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly delivered if delivered in person or sent by registered or certified, first class mail, postage prepaid to:

Magnolia Educational Research Foundation (MERF)  
250 E. 1<sup>st</sup> St., Ste 1500  
Los Angeles, CA 90012  
Attn: \_\_\_\_\_

PMH Laboratory, Inc.  
5862 Edinger Ave  
Huntington Beach, CA 92649  
Attn: Desiree Hedge, CEO

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date and year first above written.

Magnolia Educational Research Foundation (MERF)

By: \_\_\_\_\_  
Authorized Signor

PMH Laboratory, Inc.

By: \_\_\_\_\_  
Desiree Hedge, CEO



To: Magnolia Public Schools

From: Patrick Ontiveros, MPS General Counsel & Director of Facilities

Date: 3/16/2021

RE: Los Angeles Unified School District Memorandum of Understanding (MOU) & PMH Laboratory Memorandum of Understanding (MOU) for COVID-19 Testing

Magnolia Public Schools (MPS) Chief Executive Officer and MPS General Counsel acknowledge that they have read and reviewed the contract/memorandum pertaining to the above matter.

A handwritten signature in cursive script that reads "Patrick Ontiveros".

Patrick Ontiveros  
MPS General Counsel & Director of  
Facilities

3/16/2021

Date

A handwritten signature in cursive script that reads "Alfredo Rubalcava".

Alfredo Rubalcava  
MPS CEO & Superintendent

3/16/2021

Date