



Board Agenda Item #	III D: Action Item
Date:	April 22, 2021
To:	Magnolia Board of Directors
From:	Alfredo Rubalcava, CEO & Superintendent
Staff Lead:	Derya Hajmeirza, MPS Human Resources Director
RE:	Updated Los Angeles Unified School District (“LAUSD”) COVID-19 Testing And Community Engagement Community Services Agreement

Proposed Motion:

I move that the board approve the updated Los Angeles Unified School District (LAUSD) COVID-19 testing and community engagement services agreement with the updated date effective through June 30, 2022 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 sign the updated agreement on April 17, 2021.

Background

The original COVID-19 testing service agreement was presented and approved on March 18, 2021. Since then, the MPS principals and the Home Office COVID-19 response team have

worked collaboratively with the LAUSD team to start the administration of the COVID-19 testing program. On April 16, 2021, the LAUSD provided an updated agreement. In order to begin to test the LAUSD co-located sites' students and staff members in the week of April 19th, the updated agreement had to be executed immediately for the schools to reopen the week of April 26th as approved by the MPS board of directors.

Please note that either party can terminate the service agreement upon providing thirty (30) days' written notice to the other party.

Budget Implications

A detailed budget analysis will be presented before the end of the 2020-21 fiscal year based on the updated student enrollment numbers for the 2021-22 school year.

Legal Review:

This agreement has been reviewed by the MPS general counsel.

Exhibits (attachments):

Appendix 1: LAUSD MOU (updated)

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 June 30th, 2022 , 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

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 [REDACTED], operating that charter school known as [REDACTED] (“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:

XXXXXXXXX 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. A. 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 A19 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.

B. Should LAUSD receive funding from the American Rescue Plan Act of 2021 or Federal Emergency Management Agency to reimburse its actual costs for COVID Testing Services conducted during the 2020-2021 fiscal year, LAUSD shall reimburse Charter School for any amounts it paid to LAUSD in excess of LAUSD’s actual costs.
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

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



To: Magnolia Public Schools

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

Date: 4/21/2021

RE: Updated Los Angeles Unified School District ("LAUSD") COVID-19 Testing And
Community Engagement Community Services Agreement

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 black ink that reads "Patrick Ontiveros".

Patrick Ontiveros
MPS General Counsel & Director of
Facilities

4/21/2021
Date

A handwritten signature in black ink that reads "Alfredo Rubalcava".

Alfredo Rubalcava
MPS CEO & Superintendent

4/21/2021
Date