



Agenda Item #: III A: Action Item

Date: January 13, 2022

To: Magnolia Educational & Research Foundation dba Magnolia Public Schools ("MPS")
Board of Directors (the "Board")

From: Alfredo Rubalcava, CEO & Superintendent

Staff Lead: Patrick Ontiveros, General Counsel & Director of Facilities

RE: Approval of Form of Amendment to Co-Location Use Agreement for Magnolia Science Academy—2

I. Proposed Recommendation(s)

Staff recommends and moves that the Board (1) approve the form of Amendment to Co-Location Use Agreement, attached as Exhibit A (the "Amendment"), for the extension of Magnolia Science Academy—2's occupancy of a portion of the Los Angeles Unified School District ("LAUSD") land commonly known as the Birmingham campus (the "Property"), and (2) grant the MPS CEO and Superintendent the authority to negotiate and approve such changes to the Amendment as he shall deem necessary and appropriate and in the best interest of MPS and MSA-2, and to sign the Amendment and deliver it to LAUSD.

II. Background

Magnolia Science Academy –2 ("MSA-2"), located at 17125 Victory Blvd, occupies a portion of the former Birmingham Senior High School campus owned by LAUSD, under that certain Co-Location Use Agreement (the "Use Agreement") by and between LAUSD and MSA-2. Under the Use Agreement, the term of MSA-2's occupancy of the Property is co-terminus with the term of its approved charter petition. AB 130 legislatively extended the term of MSA-2's charter petition for two (2) years, from June 30, 2022, to June 30, 2024.

On or about July 8, 2021, LAUSD representatives informed MPS and MSA-2 representatives that they did not believe that AB 130 extended the term of the Use Agreement to also expire on June 30, 2024. MPS and MSA-2 disputed LAUSD's interpretation of the Use Agreement. After several months of discussion and negotiation between MPS, MSA-2, and its legal counsel, on the one hand, and LAUSD and its legal counsel, on the other hand, on December 23, 2021 LAUSD presented MPS and MSA-2 with the Amendment to extend its occupancy of the Property until June 30, 2024. Such occupancy is subject to certain terms and conditions set forth in the Amendment, among them the payment by MSA-3 and MSA-4 to LAUSD of Prop 39 over-allocation reimbursements in the amounts of \$141,185.46 and \$79,711.60, respectively. MPS staff with its legal counsel at Young Minney & Corr LLP is arguing to have the over-allocation reimbursements waived in whole or in part as they are being assessed for period of time when LAUSD campuses were closed due to COVID-19.



III. Conclusion / Budget Impact

MPS staff believes it would be in the best interests of MPS and MSA-2 to sign the Amendment with such changes as MPS staff and or its counsel may negotiate. MSA-2 has already budgeted the amounts due under the Use Agreement for its occupancy of the Property so there is no budget impact to MSA-2. The over-allocation amounts owed by MSA-3 and MSA-4, if required to be paid, would be paid from each school's [operations budget][reserves] and would not have a material negative impact on such school's budget.

EXHIBITS

EXHIBIT A Form of Amendment to Co-Location Use Agreement



EXHIBIT A

FORM OF AMENDMENT TO CO-LOCATION USE AGREEMENT

AMENDMENT
to
CO-LOCATION USE AGREEMENT

This First Amendment (“**Amendment**”) to the Co-Location Use Agreement (“**COLUA**”) is entered into by and between **LOS ANGELES UNIFIED SCHOOL DISTRICT (“LAUSD”)**, a California school district duly formed and existing under the laws of the State of California, and **MAGNOLIA EDUCATION AND RESEARCH FOUNDATION**, as the operator of that certain charter school known as “Magnolia Science Academy - 2” and “MSA-2” (“**CHARTER SCHOOL**” or “**MSA-2**”), a California public benefit corporation duly formed and existing under the laws of the State of California. LAUSD and CHARTER SCHOOL are sometimes referred to hereinafter as the “Parties” and/or individually as a “Party.”

RECITALS

A. LAUSD and CHARTER SCHOOL fully executed the COLUA, for CHARTER SCHOOL’s occupancy and use of portions of the Campus as defined in the Agreement.

B. AB 130 legislatively extended the term of CHARTER SCHOOL’s Charter Petition for two (2) years, from June 30, 2022, to June 30, 2024.

C. Due to this unique one-time circumstance, LAUSD has elected to extend the Expiration Date of the COLUA to be consistent with the extended term of the Charter Petition.

NOW, THEREFORE, for good consideration had and received and the terms and conditions stated herein, LAUSD and CHARTER SCHOOL hereby agree that the following provisions shall amend the COLUA:

1. The Parties incorporate herein all of the above Recitals as if fully set forth in the body of this Amendment.

2. Good Standing of CHARTER SCHOOL. CHARTER SCHOOL hereby represents and warrants that as of the date of this Amendment, CHARTER SCHOOL is, and shall remain, a validly formed legal entity as indicated below and organized and in good standing under the laws of the State of California:

- California public benefit corporation
- California corporation
- Other identified as _____

CHARTER SCHOOL shall provide evidence of its legal status and good standing upon request of LAUSD.

3. Term. Sections 2.3 and 2.3.1 of the COLUA are stricken in their entireties, and Section 2.3 is replaced with the following: “Term. The Term of this Agreement shall begin on that date when the Agreement is fully executed by CHARTER SCHOOL and LAUSD

(‘**Commencement Date**’). The Term of this Agreement shall expire on June 30, 2024 ‘**Expiration Date**’.”

4. No Further Renewal or Extension of the COLUA. The Charter Petition is not authorized by LAUSD. CHARTER SCHOOL understands and agrees that the COLUA shall not be renewed or extended. After the Expiration Date, LAUSD will not enter into another COLUA or other multi-year use agreement for occupancy of LAUSD property with CHARTER SCHOOL. Notwithstanding any provision, a future renewal or extension of the term of the Charter Petition shall not effectuate an automatic renewal or extension of the Term of the COLUA.

5. LAUSD Property Insurance Program. LAUSD discloses that participation in LAUSD Property Insurance Program, as defined in the COLUA, is no longer available. LAUSD’s insurance providers no longer allow separate legal entities to participate in and be covered by insurance maintained by LAUSD. All references to the LAUSD Property Insurance Program are deleted from the COLUA and Shared Use Agreement, if applicable, and these instruments shall be construed as if the LAUSD Property Insurance Program did not exist.

6. Conditions Subsequent. The effectiveness of this Amendment shall be contingent upon the satisfaction of all the following (collectively, the “**Conditions Subsequent**”). The termination of this Amendment shall also terminate the COLUA. All of the following Conditions Subsequent shall survive the earlier termination of or expiration of the COLUA, as amended.

6.1 Good Standing Under Other LAUSD Agreements. CHARTER SCHOOL shall observe and comply with the terms and conditions of any other agreement(s) that CHARTER SCHOOL may have entered into with LAUSD for MSA-2 or any other charter school that CHARTER SCHOOL may operate on LAUSD property such as, but not limited to, the COLUA and the Settlement Agreement with LAUSD (fully executed on March 20, 2015).

6.2 Proposition 39 Over-Allocated Space Reimbursement Obligations. LAUSD’s claims for Proposition 39 over-allocation reimbursements from Magnolia Science Academy 3 (“**MSA-3**”) and Magnolia Science Academy 4 (“**MSA-4**”) for the 2020-21 school year total \$141,185.46 and \$79,711.60, respectively. CHARTER SCHOOL shall pay to LAUSD the above identified amounts on behalf of MSA-3 and MSA-4 as soon as reasonably possible but no later than February 1, 2022. If CHARTER SCHOOL (on behalf of MSA-3 and/or MSA-4) and LAUSD mutually agree to reductions of these amounts owed, any differences in amounts actually paid by CHARTER SCHOOL no later than February 1, 2022 and the agreed upon reduced amounts (“**OA Credits**”) shall be applied to future Pro Rata Share charges owed by MSA-3 and MSA-4, as applicable, or LAUSD shall reimburse the OA Credits, or any remaining balance thereof, to CHARTER SCHOOL.

6.3 CHARTER SCHOOL’s Financial Statements. Per CHARTER SCHOOL’s 2019-2020 independent audit report for Magnolia Public Schools (“**MPS**”), significant deficiencies (pertaining to internal controls to ensure that the financial statements are free from material misstatements, whether due to error or fraud) were identified, that were required to be reported in accordance with Government Auditing Standard. Based on the draft 2020-2021 independent audit report provided to LAUSD’s Charter Schools Division on December 6, 2021,

MPS' corrective action plan was implemented and the 2019-2020 audit finding did not repeat. The draft 2020-2021 independent audit report reported no Federal awards findings and no State compliance findings. LAUSD expects the corrective actions to be confirmed in the final audit and for these issues not to be recurring in the future, and CHARTER SCHOOL shall inform LAUSD of the status thereof and any changes to the corrective action plan.

6.4 Future Proposition 39 Facilities Request(s). If, upon the termination or expiration of the COLUA, as amended, CHARTER SCHOOL desires to continue occupying all or a portion of its currently allocated space on the Campus, it shall submit an annual Proposition 39 facilities request consistent with the COLUA and The Charter School Act of 1992. CHARTER SCHOOL acknowledges and agrees that LAUSD's resulting Proposition 39 preliminary proposal and/or final notification of space offered for the applicable school year may, at LAUSD's sole discretion, be limited to only that portion of space currently allocated on the Campus to CHARTER SCHOOL. The limitation may apply notwithstanding, inter alia, potential increases in CHARTER SCHOOL's average daily attendance projections, changes to the LAUSD school site and/or general geographic area in which CHARTER SCHOOL wishes to locate, adjustments to CHARTER SCHOOL's grade levels served, and/or a material revision or renewal of the Charter Petition. CHARTER SCHOOL agrees to not challenge LAUSD's compliance with Proposition 39 based on such an allocation for an applicable school year.

6.5 Withdrawal of Proposition 39 Facilities Request 2022-2023. Upon full execution of this Amendment, CHARTER SCHOOL's Proposition 39 facilities request for the 2022-2023 school year is deemed withdrawn.

7. Conflict; Electronic Signature. In the event of any conflict between the terms of this Amendment and the COLUA, this Amendment shall supersede and take priority. Except as set forth herein, all other terms and conditions of the COLUA continue to apply to the Parties and remain in full force and effect. Any executed copies of this Amendment and all related documents may be executed and delivered by mail or email transmission. The recipient of said transmission shall consider such delivery to constitute delivery of the originally executed document. Due to work from home status for much of LAUSD, facsimile transmission shall not be an accepted form of delivery. Each party represents and warrants that any document which they deliver by email transmission shall be true and correct copy of the original document. Each party hereby agrees that, when delivery of a document is affected by an email transmission, the transmitting party's signature to such a document shall be fully binding upon the transmitting party with the same force and effect as if the original document had been personally delivered.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the date set forth adjacent to their respective signatures. The last date shall serve as the effective date of this Amendment.

[Signatures on the following page]

**LOS ANGELES UNIFIED SCHOOL
DISTRICT
“LAUSD”**

Dated: _____, 2022

By: _____

Name: Albert J. Grazioli, Jr.
Title: Director of Asset Development

**MAGNOLIA EDUCATION AND RESEARCH
FOUNDATION
“CHARTER SCHOOL”**

Dated: _____, 2022

By: _____

Name: _____
Title: _____