



Board Agenda Item #	II B: Recommended Action Item
Date:	September 7, 2022
To:	Magnolia Public Schools – Finance Committee
From:	Alfredo Rubalcava, CEO & Superintendent
Staff Lead:	Steve Budhreja Ed.D., Chief Financial Officer
RE:	Approval of Fee Agreement and Engagement between Magnolia Educational & Research Foundation and CFOMW Tax, LLC

Proposed Board Recommendation

I move for the Finance Committee to approve the contract to file a refund claim under the Employee Retention Tax Credit, per 26 U.S.C. § 3134, and further recommends that the Committee move and recommend for the Board to adopt the same.

Budget Implications

Additional funding for MPS in the form of Federal monies as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020.

Background:

The Employee Retention Credit under the CARES Act encourages businesses to keep employees on their payroll. The refundable tax credit is 50% of up to \$10,000 in wages paid by an eligible employer whose business has been financially impacted by COVID-19.

Attachments:

- Service Fee Agreement and Engagement for Magnolia Educational & Research Foundation

CFOMW Tax, LLC  
38 29<sup>th</sup> Place  
Venice, CA 90291

## **SERVICES FEE AGREEMENT**

**Via Email:** sbudhreja@magnoliapublicschools.org

**RE: Fee Agreement and Engagement for Magnolia Educational & Research Foundation**

Dear Steve,

Thank you for selecting CFOMW Tax, LLC (the "Firm" of "we") to provide Magnolia Educational & Research Foundation ("Magnolia" or "you") with the tax consulting services set forth below. In connection with our engagement to perform this work, we require written acknowledgement of this agreement for our files and the relevant rules of professional conduct.

We feel that it is in the best interest of our clients that they be fully informed of our billing practices and what services we will be undertaking on their behalf. The purpose of this letter, therefore, is to set forth the scope of our engagement to you, to set forth the financial arrangements regarding our engagement, and to verify our agreement of the foregoing:

**1. Scope of Engagement**

Subject to the terms and conditions herein, including without limitation advance payment of the retainer and a signed copy of this agreement, the Firm will perform those services which you requested and, more specifically, calculating your potential refund claim related to the IRS Employee Retention Tax Credit ("ERTC"), prepare all related tax forms to obtain the ERTC, and, if necessary, help you prepare and represent you in an audit defense related to the ERTC (the "Engagement"). We anticipate this work will require us to review your historical tax records and ask you various questions related to the Engagement.

**2. Responsibilities of the Parties**

The Firm will provide those services reasonably required to represent you in prosecuting the claims described in Paragraph 2 and will take reasonable steps to keep you informed of progress and developments, and to respond promptly to inquiries and communications. You agree to be truthful with the Firm, to cooperate, to keep the Firm informed of any information and developments which may come to your attention, to abide by this Agreement, to pay the Firm's bills for costs on time, and to keep the Firm advised of your address, telephone number and whereabouts. You agree to cooperate fully with the Firm in all matters related to the preparation and presentation of your claims.

**3. Fee for Representation**

Generally, we bill an hourly rate, however for this matter we will only bill you to complete the Engagement if the Engagement results in a refund of taxes or amounts previously paid or due related to a successful ERTC claim. In the event that you obtain a refund related to taxes or

amounts paid pursuant to the ERTC claim, you shall pay a fee as follows:

Twelve Percent (12%) of the total refund amount received. For the avoidance of doubt, should you receive a refund of \$100,000; you shall pay the Firm a fee of \$12,000. This fee is due immediately and payable within thirty (30) days of receipt of part or all of the refund you receive.

In the event we are required to do additional work outside the reasonably anticipated scope of this Engagement ("Out-of-Scope Services"), such work shall be on a separate hourly basis and may require a separate engagement letter; an hourly rate can be outlined in that agreement. Out-of-Scope Services shall include work on separate or distinct matters not contemplated initially by both parties at the time this Agreement was entered into, or rework or other updates to documents necessary to correct inaccurate statements or representations. If we anticipate the need to provide any significant Out-of-Scope Services in connection with Engagement, we will endeavor to notify you before commencing with such work and incurring expenses and time and may request that you sign a separate engagement letter for the additional services to be performed.

Out-of-Scope Services include, but are not limited to the following:

- Preparation of original or amended federal or state income tax returns other than those as outlined in the Engagement;
- Bookkeeping or financial record compilation services;
- Representation before state tax authorities concerning audits or formal examinations;
- Other business consulting services not related to the proposed Engagement;
- Preparing or drafting of other legal documents not specifically discussed earlier;
- Costs for subsequent state revenue authority appeals and audits, or costs incurred for filing in federal, District Court, or any other state court.

We do our best to see that our clients are satisfied not only with our services but also with the reasonableness of the fees and disbursements charged for these services. Therefore, if you have any questions about or objection to a statement or the basis for our fees to you, you should raise it promptly and not more than thirty (30) days after you receive a bill for discussion. If you object only to a portion of the statement, we ask you pay the remainder, which will not constitute a waiver of your objections.

#### **4. Disbursements**

The performance of professional services generally involves costs and expenses, some of which must be paid to third parties. These expenses include, but are not limited to, administrative filing fees, court reporters, deposition fees, travel costs, copying costs, telecopier costs, messenger services, long distance telephone charges, computerized research expenses and expenses of experts whom we deem appropriate to assist in our representation of you. For purposes of this Engagement, we shall not charge any amounts for costs and expenses.

#### **5. Retainer**

No retainer is being requested as part of this Engagement.

#### **6. No Guarantees**

The Firm and you understand and agree that no results have been guaranteed by the Firm or any of its employees and that this agreement is not based upon any such promises or anticipated results. Amounts due to the Firm are not contingent upon any particular results.

## **7. Disputes and Arbitration**

In the unlikely event you and the Firm are unable to resolve differences on the question of any fee and/or expense items, you hereby agree to make a good faith effort at resolving the dispute. If the dispute cannot be resolved, the parties agree to submit all disputes arising under this agreement to arbitration in Los Angeles, California before a single arbitrator of the American Arbitration Association (“AAA”). The arbitrator shall be selected by application of the rules of the AAA, or by mutual agreement of the parties, except that such arbitrator shall be an attorney admitted to practice law in California. No party to this agreement will challenge the jurisdiction or venue provisions as provided in this section. Nothing contained herein shall prevent the party from obtaining an injunction.

## **8. Withdrawal from Representation**

Our firm's relationship with you is one of mutual trust and confidence. If you, for whatever reason, wish us to cease representing you, you may request that we do so. If we feel we no longer wish to represent you, we will inform you in writing so you have sufficient time to find new representation. We generally will only do so in the following circumstances: (a) a lack of cooperation by you in promptly submitting necessary requested information; (b) your knowingly providing us, your adversaries or the government with false information; (c) your disregard of advice about matters of critical importance to your case; (d) your failure to promptly pay fees; or (e) for any other reason provided advance notice is provided.

Upon such termination, however, you would remain liable for any unpaid fees and costs. We also shall be authorized to reveal this agreement and any other necessary documents to any court or agency if the same should prove necessary to effect withdrawal or collection of our fees. Should you terminate the Engagement after the relevant forms required to file the ERTC are provided to you and a refund is later obtained, the fees stated above shall remain fully due and payable.

It is the policy of this firm to make every effort to have our clients feel that they are treated on a fair basis. We welcome an honest discussion of our fees and our services and encourage our clients to inquire about any matter relating to our fee arrangement or monthly statements that are in anyway unclear or appear unsatisfactory. If you have any questions, please do not hesitate to call us.

## **9. Miscellaneous**

This agreement will also apply to services rendered for such future matters that we agree will be handled by the Firm. If, however, such services, are substantially different from those to which this agreement applies (for instance, an appearance on your behalf in court), either party may request that a new agreement be executed, or that this agreement be re-acknowledged.

By executing this agreement, you acknowledge that fees received by the Firm may be utilized to pay employees or contractors associated with the Firm who assisted with the Engagement.

If this letter correctly sets forth your understanding of the scope of the services to be rendered to the company by the Firm and the manner by which fees will be charged and paid, and if the terms of the engagement are satisfactory, please execute the enclosed copy of this letter and return it to us. If the scope of the services described is incorrect or if the terms of the engagement set forth in this letter are not satisfactory to you, please let us know in writing

so that we can discuss either aspect.

By executing this agreement, you acknowledge that there is uncertainty concerning the outcome of this matter and that the Firm and the undersigned professionals have made no guarantees as to the disposition of any phase of this matter. All representations and expression relative to the outcome of this matter, are only expressions of the said professional's opinions and do not constitute guarantees. We look forward to continuing to work with you and thank you once again for the opportunity to serve.

Very truly yours,

A handwritten signature in black ink, appearing to be the initials 'MW' with a stylized flourish.

Michael Williams

READ, AGREED AND CONSENTED TO:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date