



Agenda Item:	II B: Consent Item
Date:	July 13, 2023
To:	Magnolia Educational & Research Foundation dba Magnolia Public Schools (“MPS”) Board of Directors (the “Board”)
From:	Alfredo Rubalcava, CEO & Superintendent
Staff Lead(s):	Gokhan Serce, Regional Director and Principal at MSA-San Diego
RE:	ASES Agreement Renewal with YMCA & MSA-San Diego

**Action Proposed:**

I move that the Board grants approval to Alfredo Rubalcava, CEO and Superintendent of Magnolia Public Schools (MPS) to sign the Memorandum of Agreement (MOA) for MSA – San Diego Afterschool ASES Program with YMCA of San Diego County (YMCA) and the MOA with San Diego County Office of Education (SDCOE).

**Purpose:** To renew agreement with the current ASES service provider and the county consortium.

**Background:**

MSA-SD has been receiving after school program grant and services through San Diego Unified School District (SDUSD.) In January 2016 SDUSD informed MSA-SD that the district would no longer be providing PrimeTime before/after school services at Magnolia in 2016-17 school year as MSA-SD’s fiscal agent, however the After School Education and Safety (ASES) funds that fund the program would remain allocated to Magnolia either through SDCOE or directly. In order to continue to receive these funds to offer a before/after school program, MSA-SD contacted San Diego County Office of Education (SDCOE). After switching to SDCOE, MSASD needed an agreement with SDCOE annually and an agreement with the after-school service provider YMCA of San Diego County (YMCA). The term of these agreements are July 1, 2023 through June 30, 2024. YMCA has been MSA-SD’s after school service provider for the past 11 years.

Based on MPS policy MPS Board wanted to receive the grant letter to approve the agreements for the



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

Although we still do not have the grant letter, we are expecting to receive them in October. It may take a few months for the CDE to officially send the new updated grant amounts to the SDCOE so we would amend our agreement a few months down the line (once that is final) as we have had to do in some prior years.

**Analysis:** MSA-San Diego has been partnering with YMCA for many years and would like to continue the partnership in 2022-23, too.

**Impact:**

The ASES expanded learning program provides a safe and supportive environment for MSA-San Diego students from dismissal to 6pm every school day. With the approval of this item Magnolia will be able to continue to provide a quality expanded learning program to its students in need of an after school program. ASES programs positively impact students by improving their academic performance, increasing engagement, enhancing social skills, providing expanded learning opportunities, improving behavior and discipline, promoting health and well-being, and increasing school attendance.



**Budget Implications:**

ASES is a state grant and needs to be disbursed in compliance with the California ED Code. The fiscal agent, SDCOE, reimburses MSA-SD for the expenses occurred by the YMCA. All income and expenses will be updated in the budget based on final grant award notification numbers. Therefore, there will be no additional costs to be incurred to the MSA San Diego 23/24 budget.

Funding Source: ASES grant money through SDCOE Consortium.

**Exhibits:**

- **2023-24 ASES MOA between MSA-San Diego and YMCA**

## MEMORANDUM OF AGREEMENT

### After School Education & Safety (ASES) Program 2023-24

This Agreement is to provide program services for the **After School Education & Safety (ASES) Program** and is entered into this 1st day of July 1, 2023, by and between the **Magnolia Educational & Research Foundation for Magnolia Science Academy-San Diego** (herein known as “MSA-SD”) and **YMCA of San Diego County** (herein known as “YMCA”) who agrees to provide the services in accordance with the provisions of the California Education Code (EC) sections 8482-8484.7.

#### 1. General Conditions:

##### **ASES Program Hours of Operation and Attendance Requirements:**

1. The After School Program will begin operation every day upon school dismissal and will remain open until 6:00 P.M.
2. To ensure that subsequent ASES grant awards will not be reduced due to insufficient program attendance and performance, YMCA must enforce the grant rules in compliance with **California Education Code 8483.7. (a) (1) (A)**. California Education Code 8483.7. (a) (1) (A). states: Each school that establishes a program pursuant to this article is eligible to receive a three-year direct grant, that shall be awarded in three one-year increments and is subject to semi- annual attendance reporting and requirements as described in Section 8482.3 once every three years:
  - a. The CDE shall provide technical support for development of a program improvement plan for grantees under the following conditions: (I) If actual pupil attendance falls below 75 percent of the target attendance level in any year of the grant. (II) If the grantee fails, in any year of the grant, to demonstrate measurable outcomes pursuant to Section 8484.
  - b. The CDE shall adjust the grant level of any school within the program that is under its targeted attendance level by more than 15 percent in each of two consecutive years.
  - c. In any year after the initial grant year, if the actual attendance level of a school within the program falls below 75 percent of the target attendance level, the CDE shall perform a review of the program and adjust the grant level as the CDE deems appropriate.

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

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

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

#### 3. Staffing Requirements:

1. The YMCA must maintain a student-to-staff ratio (program-wide) of no more than 20 to 1.
2. The YMCA must establish qualifications for each staff position that, at a minimum, ensure that all staff members who directly supervise pupils meet the minimum qualifications for an instructional aide, pursuant to the policies of MSA-SD.
3. YMCA shall be responsible for students, staff, and parents accessing services under this Agreement. The YMCA certifies that it shall provide adequate supervision of the students, staff, and other program personnel, and that its staff will follow legal guidelines on reporting child abuse/neglect.
4. The YMCA must certify that all personnel providing services to students are adequately screened through Livescan and that such personnel has provided evidence of freedom from active tuberculosis prior to starting service at any school site.

#### **4. State Mandated Data and Evaluation Requirements:**

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

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

1. Upon notification of overpayment more than the grant award amount or request for reimbursement of unexpended ASES grant funds by the CDE, MSA-SD or YMCA will be required to return the entire amount of funding in question to the SDCOE.
2. Ensure that expenditures shall comply with all applicable provisions of state and local rules, regulations and policies relating to the administration, use, and accounting for public school funds, including, but not limited to, California Education Code 8483.7.
3. Failure to comply with California Education Code 8483.7 shall result in a reduction of the ASES grant award during the current fiscal year or in subsequent years of the grant.
4. MSA-SD shall amend contract with the YMCA if the state ASES reimbursement rate is adjusted during the contract agreement. The current rate is \$10.18 per student/per day for the PM Program.
5. MSA-SD shall amend the contract maximum to the appropriate percentage grant award if increased or reduced in contract year.

#### **6. Federal Program Monitoring and Annual Program Audit Guidelines.**

1. MSA-SD shall provide a copy of Federal Program Monitoring (FPM) and Annual Program Audit findings/exceptions to SDCOE and YMCA relative to the administration of the ASES Grant Requirements per California State Education Code Sections 8482-8484.6 and the Standards and Procedures for Audits of California K-12 Local Education Agencies 2007-2008; Article 3.1. § 19846. After School Education and Safety Program.
2. Both MSA-SD and YMCA personnel shall participate in Federal Program Monitoring (FPM) training when required.
3. Both MSA-SD and YMCA of San Diego County will attend Federal Program Monitoring (FPM) meetings with the CDE.

## **7. Budget Restrictions**

1. No more than 10% of grant funds may be used for total administrative costs by the YMCA including no more than 5% on indirect costs.
2. The YMCA must expend at least 85% of grant funds in direct services for pupils.

## **8. Program Matching Funding Requirements.**

1. The ASES Program must provide local funds totaling no less than one-third of the grant amount.
2. The MSA-SD shall provide matching funds for facilities and space usage not to exceed 25% of total match requirement.  
The MSA-SD shall provide ASES Program matching funds from the Expanded Learning Opportunities Program.

## **9. Additional ASES Program Operation Requirements.**

1. Both MSA-SD and YMCA shall each designate an ASES Contact person.
2. Ensure the designated ASES Contact(s) attends the scheduled ASES District Contact meetings provided by the System of Support for Expanded Learning (SOSEL), the After School Administrative Program Support Center (ASC), the Children's Initiative (CI), and the SDCOE.
3. Ensure that the program will include an educational and literacy element designed to provide tutoring and/or homework assistance in one or more of the following core content subject areas: language arts, mathematics, history and social science, science, and computer training.
4. The program will have an educational enrichment element that may include, but not limited to STEM, SEL, organized sports, visual and performing arts, service learning, and youth development activities. These items are to be discussed collaboratively between district administration, school administration, and YMCA to best meet the needs of MSA-SD.
5. Plan the program through a collaborative process that includes parents, youth, school administration and personnel, community organizations, and the private sector.
6. If the site is not located on a school campus, it must be as accessible and available as the school site with safe transportation provided by MSA-SD to enrolled participants.
7. MSA-SD shall collaborate with YMCA to provide snack and/or supper program that conforms to Article 2.5 of Chapter 9 of Part 27, commencing with Education Code Section 49430. (EC 8482.3(d)).
8. Provide information regarding the ASES Program in a form and language that is easily understandable to all parents.
9. Each partner in the application will share responsibility for the quality of the program. MSA-SD and YMCA will collaborate to conduct an annual continuous quality improvement process.
10. MSA-SD and YMCA will collaborate and coordinate with the regular school day program.
11. MSA-SD is responsible to ensure the YMCA has access to safe, clean, and supportive indoor/outdoor space at participating school sites to conduct a high-quality program. Space shall include adequate indoor space for all academic and enrichment activities.
12. Each ASES funded site will be responsible for the development of an After School Program Plan as part of the San Diego ASES Program Consortium.
13. MSA-SD and YMCA administration will review the ASES Program Plan annually and provide updates and/or revisions based on ASES program components, California Department of Education guidelines, and identified district program changes based on changes in grant or sites.
14. Ensure that ASES staff attend District and SDCOE training opportunities designed to maximize program effectiveness.
15. Host scheduled technical assistance site visits conducted by staff from SOSEL, ASC, and the CI.

16. Collaborate with staff from SOSEL, ASC, and the CI to review site visitation and technical assistance reports and plan for continuous program improvement.
17. MSA-SD and YMCA will ensure the proper record keeping and documentation of program activities and the timely submission of all required reports. All reports due to SDCOE and delegated to YMCA by MSA-SD shall include written authorization and detailed instructions with at least 30 days' notice unless otherwise agreed upon by both parties.

**10. Terms and Conditions of the Grant Award**

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

**11. Compensation/Expenses and Payment Schedule**

1. The YMCA shall provide monthly invoices and income statements for all expenses.
2. MSA-SD shall reimburse YMCA for expenses within 30 days of monthly invoice.
3. YMCA shall provide any additional expense documentation and financial reports to MSA-SD as needed based on written request.
4. The YMCA shall retain record of expenses for a minimum of 5 years.

Annual total ASES allocation(s) **shall not exceed \*\$104,386.70.** to YMCA.

**12. YMCA & MSA-SD Contact Persons**

Magnolia Science Academy Contact:

Gokhan Serce  
Principal  
Magnolia Science Academy-San Diego  
Magnolia Public Schools  
6526 Estrella Ave  
San Diego, CA 92120

YMCA of San Diego County Contact:

Steve Hensel  
Executive Director  
Expanded Learning Programs  
YMCA of San Diego County  
4451 30th St.  
San Diego, CA 92116

P: 619-644-1300  
E gsecre@magnoliapublicschools.org

P: 619-347-6917  
E: shensel@ymcasd.org

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

### **13. Confidentiality**

1. All communications and information obtained by YMCA from MSA-SD relating to this agreement, and all information developed by YMCA under this agreement, are confidential. Except as provided in Subsection 3, without the prior written consent of an authorized representative of MSA-SD, YMCA shall neither divulge to, nor discuss with, any third party either the work and services provided hereunder, or any communication or information in connection with such services or work, except as required by law. Prior to any disclosure of such matters, whether as required by law or otherwise, YMCA shall inform MSA-SD in writing, of the nature and reasons for such disclosure. YMCA shall not use any communications or information obtained from MSA-SD for any purpose other than the performance of this agreement, without MSA-SD's written prior consent. YMCA, on behalf of itself and its employees, agents, and subcontractors, agrees to comply with the Family Educational Rights and Privacy Act (FERPA) and California Education Code section 49060 *et seq.* MSA-SD is subject to the Public Records Act and FERPA, both of which may require MSA-SD to disclose information to the public and/or parents. The YMCA will need notification within 3 business days if information is disclosed.
2. At the conclusion of the performance of this agreement, YMCA shall return to MSA-SD all written materials constituting or incorporating any communications or information obtained from MSA-SD. Upon MSA-SD's specific approval, YMCA may retain copies of such materials, subject to the requirements of Subsection 1.
3. YMCA obligation of confidence with respect to information submitted or disclosed to YMCA by MSA-SD hereunder shall survive termination and comply with all requirements outlined in this Agreement which is attached hereto and made a part hereof.

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

### **14. Confidentiality of Services**

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

YMCA agrees to all the following:

YMCA shall not disclose Private Information obtained from MSA-SD in the performance of this Agreement to any other vendor, person, or other entity, unless one of the following is true:



- a. The disclosure is authorized by this Agreement;
- b. The YMCA received advance written approval from the MSA-SD to disclose the information; or
- c. The disclosure is required by law, a lawfully issued subpoena or judicial order.
- d. Any disclosure or use of Private Information by YMCA that is authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement.

Any failure of YMCA to comply with the Nondisclosure of Private Information ("Nondisclosure") described herein shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, MSA-SD may terminate this Agreement and take all other appropriate action against YMCA. Prior to this provision taking effect, the YMCA shall be placed on written notice of any Nondisclosure and be provided with at least thirty (30) days to cure any such Nondisclosure.

#### **15. Termination for Convenience**

1. Either party to this agreement may, by written notice to the other party, terminate this agreement in whole or in part at any time, for either party's convenience.

If the termination is for the convenience of MSA-SD, upon receipt of 60 days' notice, YMCA shall:

- a. Immediately discontinue all services affected (unless the notice directs otherwise) and
- b. Deliver to MSA-SD all information and material as may have been involved in the provision of services in the performance of this agreement, whether completed or in process. Termination of this agreement shall be as of the date of receipt by YMCA of such notice.

YMCA shall submit a final invoice within 60 days of termination and upon approval MSA-SD shall reimburse for services performed prior to the effective date of termination and other costs incurred by YMCA to implement the termination.

#### **16. Termination for Default**

Either party to this agreement may, by written notice to the other party, terminate this agreement in whole or in part at any time because of the failure to fulfill its contractual obligations.

If MSA-SD terminates this agreement, upon receipt of such notice, YMCA shall:

Immediately discontinue all services affected (unless the notice directs otherwise) and

Deliver to MSA-SD all information and material as may have been involved in the provision of services in the performance of this agreement, whether completed or in process. Termination of this agreement shall be as of the date of receipt by YMCA of such notice.

If the termination is due to the failure of YMCA to fulfill its contractual obligations, MSA-SD may take over the services, and complete the services by contract or otherwise.

### **17. Independent Contractor**

It is expressly always understood that, while rendering the services described herein, and in complying with any terms and conditions of this Agreement, YMCA is acting as an independent contractor and not as an officer, agent, or employee of MSA-SD.

### **18. Hold Harmless**

YMCA agrees to indemnify, defend and hold harmless MSA-SD, its board of trustees, officers, agents, employees, and contractors against any and all claims, cost, demands, expenses (including attorney's fees), losses, damages, injuries, and liabilities arising from any accident, death or injury whatsoever or however caused to any person or property, because of, arising out of, or related to the negligence or willful misconduct of the YMCA and its employees, agents, and representatives. It is understood that such indemnity shall survive the termination of this agreement.

MSA-SD agrees to indemnify, defend and hold harmless the YMCA, its board of trustees, directions, officers, agents, and employees against any and all claims, cost, demands, expenses (including attorney's fees), losses, damages, injuries, and liabilities arising from any accident, death, or injury whatsoever or however caused to any person or property, because of, arising out of, or related to the gross negligence, or willful misconduct of the MSA-SD and its employees, agents, and representatives. It is understood that such indemnity shall survive the termination of this agreement. This section 18 shall survive termination of this agreement.

### **19. Worker's Compensation**

The YMCA is self-insured for workers' compensation insurance. A Certificate of Self-Insurance shall be provided upon request. The YMCA, and not MSA-SD, shall be fully responsible for workers compensations claims initiated by its employees and agents due to the YMCA's negligence.

### **20. Non-Funding**

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

### **21. Audit**

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

## 22. Insurance Requirements

During the entire term of this Agreement and any extension or modification thereof, YMCA shall keep in effect, at its sole expense, a policy (or policies) of general liability insurance, including contractual liability coverage, professional liability, and auto liability coverage of owned and non-owned vehicles used by YMCA in relation to the performance of services under this Agreement with minimum limits of two million dollars (\$2,000,000) per occurrence which shall include coverage for sexual abuse/molestation, and two million dollars (\$2,000,000) in aggregate. Such auto liability coverage shall include limits of not less than (\$1,000,000) combined single limit per accident. All above-noted insurance shall name Magnolia Educational & Research Foundation as an additional insured, and an endorsement evidencing such coverage shall be provided within thirty (30) days, only as to matters arising out of this Agreement for which YMCA is required to indemnify the Magnolia Educational & Research Foundation under section 22 of this Agreement.

YMCA of San Diego County shall file, with MSA-SD, Certificates of Insurance indicating a thirty-day (30) cancellation notice and naming **Magnolia Educational & Research Foundation** as an additional insured.

## 23. Governing Law/Venue San Diego

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

## 24. Compliance with Law

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

## 25. Pupil Safety/School Safety Act

Pupil Safety/School Safety Act: MSA-SD shall determine the YMCA's level of contact with pupils from the following two (2) choices, by inserting an **X** below:

\_\_\_The YMCA will have "**limited contact**" with pupils and the Contractor/Provider may be required to do one or more of the following to protect pupils:

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

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

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

\_\_\_\_\_  
By (Authorized Signature)

\_\_\_\_\_  
Date

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

**26. Period of Agreement & Final Approval**

1. The term of this Agreement shall be July 1, 2023, through June 30, 2024.
2. This Agreement is of no force or effect until approved by signature by Magnolia Educational & Research Foundation CEO & Superintendent and the YMCA of San Diego County President/CEO.

**27. Entire Agreement**

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

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

**Magnolia Science Academy**

**YMCA of San Diego County**

By (Authorized Signature)

By (Authorized Signature)

\_\_\_\_\_  
Gokhan Serce  
Principal  
Magnolia Science Academy-San Diego

\_\_\_\_\_  
Todd Tibbits  
President/CEO  
YMCA of San Diego County

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

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

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

YMCA Federal EIN #: 95-2039198

\_\_\_\_\_  
Alfredo Rubalcava  
CEO & Superintendent  
Magnolia Educational & Research Foundation  
Db a Magnolia Public Schools

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