



Agenda Item:	IV C: Consent Item
Date:	July 11, 2024
To:	Magnolia Educational & Research Foundation dba Magnolia Public Schools (“MPS”) Board of Directors (the “Board”)
From:	Alfredo Rubalcava, CEO & Superintendent
Staff Lead(s):	Megan Craig, Principal at Magnolia Science Academy-San Diego
RE:	ASES MOA Agreement for MSA-San Diego

Action Proposed:

I move that the Board grants approval to Mr. Alfredo Rubalcava, CEO and Superintendent of Magnolia Public Schools to sign the Memorandum of Agreement for Magnolia Science Academy-San Diego Afterschool ASES Program with YMCA of San Diego County and with San Diego County Office of Education.

Purpose:

To renew the ASES agreement with YMCA and SDCOE to continue providing after school program through ASES grant for our students.

Background:

MSA-San Diego has been receiving after school program grant and services through San Diego Unified School District (SDUSD.) In Jan 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, 2025 through June 30, 2025. YMCA has been MSA-SD’s after school service provider for the past 12 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 most of the time. 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 last three years 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 three years in the past.



Although we still do not have the grant letter, we are expecting to receive them before February. 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. The attached agreement has the projected amount from SDCOE.

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.

In order to keep serving same number of students we are also utilizing ELOP grant as part of the program.

Funding Source: ASES grant funds through SDCOE Consortium and ELOP Grant

Exhibits:

- **2024-25 ASES MOA between MSA-San Diego and YMCA**

INDEPENDENT AGENCY AGREEMENT
BETWEEN
THE YMCA OF SAN DIEGO COUNTY
AND
MAGNOLIA EDUCATIONAL & RESEACH FOUNDATION FOR
MAGNOLIA SCIENCE ACADEMY-SAN DIEGO

This Independent Agency Agreement is entered into as of July 1, 2024 (“Effective Date) by and between the YMCA of San Diego County, hereinafter referred to as “Agency,” and Magnolia Educational & Research Foundation for Magnolia Science Academy-San Diego, hereinafter referred to as “Charter”. The Agency and Charter may be referred to herein collectively as the “Parties.”

RECITALS

WHEREAS, California Government Code section 53060 authorizes Charter to contract with and employ persons for the furnishing of special services, if such persons are specially trained, experienced, and competent to perform the special services requested; and

WHEREAS, Charter is in need of special services related to expanded learning programs and youth enrichment opportunities; and

WHEREAS, Agency is specially trained and possesses the necessary experience and competency to perform the requested services.

WHEREAS, the services under this Agreement are funded in whole or in part by any state or federal grant; and

NOW THEREFORE, the Parties agree as follows:

TERMS OF AGREEMENT

Section 1: Agency Services. Subject to the terms and conditions set forth in this Agreement, Agency shall provide to Charter the services described in Attachment B: Agency General Scope of Work/Services. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit B, this Agreement shall prevail.

Section 2: Term. The term of this Agreement shall begin on the Effective Date and shall end on June 30, 2025. Agency shall complete the work described in Exhibit B prior to that date unless the term of this Agreement is terminated or extended by a properly executed amendment.

Section 3: Compensation. Charter agrees to pay the Agency for services satisfactorily performed a total not to exceed amount of \$153,631.31.

3.1 Invoices. Agency shall submit monthly invoices for reimbursement of expenditures to Charter which shall include a statement of work performed, billing period, and Agency signature. The appropriate budget or grant identifier name may be included in statement of work as requested by Charter in advance of services performed. If the Charter approves the invoice, payment shall be due to the Agency within 30 days of receipt of the invoice.

3.2 Final Payment. Charter shall pay the Agency the total reimbursement sum due pursuant to this Agreement within 60 days after completion of all services and submittal of final invoice.

3.3 Total Payment. The Agency shall not invoice for any amount more than the maximum not-to-exceed amount unless this Agreement is modified prior to submission of such an invoice by a properly executed amendment.

3.4 Reimbursable Expenses. The Agency shall follow all Charter written guidance on allowability of eligible expenses.

Section 4: Insurance Requirements. During the entire term of this Agreement and any extension or modification thereof, Agency 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 Agency 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 the Charter as an additional insured, and an endorsement evidencing such.

The coverage shall be provided within ninety (90) days, only as to matters arising out of this Agreement for which Agency is required to indemnify the Charter under section 9 of this Agreement.

The Agency shall file, with Charter, Certificates of Insurance indicating a thirty-day (30) cancellation notice and naming **Magnolia Educational & Research Foundation** as an additional insured.

Section 5: Independent Agency. It is expressly always understood that, while rendering the services described herein, and in complying with any terms and conditions of this Agreement, Agency is acting as an independent contractor and not as an officer, agent, or employee of Charter.

Section 6: Confidentiality. If the Agency will have access to student records, Agency agrees to comply with the Family Educational Right and Privacy Act (FERPA) of 1974, and all requirements imposed by or pursuant to regulation of the California Department of Education (CDE) and the Charter. This assurance is given to obtain access to individual student data for the purpose of using said data to fulfill contractual obligations with the Charter.

6.1 Non-Disclosure. A party may from time to time disclose certain Confidential Information to the other party in connection with the Services. "Confidential Information" means (a) information relating to the party that is identified in writing as confidential at the time of its disclosure or that the receiving party understands or should reasonably understand to be confidential; and (b) in the case of disclosure to YMCA, "personal information" as defined in California Civil Code section 1798.140 (v) of any Charter student or family member of a Charter student. Each party shall use Confidential Information of the other party only in connection with performance of the Services and shall not disclose such Confidential Information except as required by law, expressly authorized by this Agreement, or expressly authorized by the other party in writing.

At the conclusion of the performance of this Agreement, Agency shall return to Charter (or at Agency's election, destroy) all written materials constituting or incorporating any Charter Confidential Information provided, however, to the extent is it not feasible for Agency to purge Confidential Information from back-up storage, Agency's obligations under section 6 shall continue to apply to all such retained Confidential Information.

The Charter may disclose to any vendor, or Agency approved third parties, any information otherwise subject to Subsection 1 that is reasonably required for the performance and administration of the scope of work described in this contract. Prior to any such disclosure, Charter shall obtain the Agency's written Agreement to the requirements of subsection 6.1.

Section 7: Termination & Modification

7.1 Termination for Convenience. Either Party to this Agreement may, for either party's convenience, terminate this Agreement on not less than sixty (60) days; written notice.

If the termination is by Charter, Agency shall:

Discontinue all services affected (unless the notice directs otherwise) and

Deliver to Charter all information and material then due to be delivered under this Agreement, whether completed or in process; and

Submit a final invoice within 60 days of termination. Agency shall endeavor to avoid any unnecessary or avoidable expense to Charter.

7.2 Termination for Default. Either party to this Agreement may, terminate this Agreement at any time because of the material failure of the other party to fulfill its contractual obligations, so long as the notice reasonably specifies the failure, and the other party does not cure the failure within seven (7) days.

If this Agreement is terminated by Charter, Agency shall immediately discontinue all services;

Deliver to Charter all information and material due to be delivered under this Agreement, whether completed or in process; and

Submit a final invoice within 60 days of termination. Agency shall endeavor to avoid any unnecessary or avoidable expense to Charter.

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

7.3 Extension. The Parties may extend the end date of this Agreement beyond that provided in Section 2. Any such extension shall require a written amendment to this Agreement signed by all Parties and approved by the Charter's governing board.

7.4 Amendment. The Parties may amend this Agreement only by a writing signed by all Parties and approved by the Charter's governing board.

Section 8: Audit and Inspection of Records. Agency agrees to maintain and preserve until five years after termination of this Agreement, and to permit Charter, CDE, 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.

Section 9: Hold Harmless. Agency agrees to indemnify and hold harmless the Charter, its board of trustees, 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 by or arising out of, or related to the negligence or willful misconduct of the Agency and its employees, agents, and representatives. It is understood that such indemnity shall survive the termination of the Agreement.

Charter agrees to indemnify and hold harmless the Agency, its board of trustees, 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 by or arising out of, or related to the negligence or willful misconduct of the Charter and its employees, agents, and representatives. It is understood that such indemnity shall survive the termination of the Agreement.

Section 10: Worker's Compensation. The Agency is self-insured for workers' compensation insurance. A Certificate of Self-Insurance will be provided upon request.

Section 11: Nondiscrimination and Equal Opportunity. The Agency agrees that it shall not discriminate based on a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractors, or participant for any services or programs provided by Agency under this Agreement.

Section 12: Fingerprinting/Criminal Background Investigation Certification.

Charter shall determine the Agency's level of contact with pupils from the following two (2) choices, by inserting an **X** below:

 The Agency will have "**limited contact**" with pupils and the Agency will be required to do one or more of the following to protect pupils:

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

 X The Agency will have "**greater than limited contact**" with pupils and the Agency 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 Agency shall not permit any employee, including the employees of any subcontractor, to perform services under this contract until:

The Department of Justice has determined that these employees have not been convicted of or have charges pending for a defined felony.

The Agency has **certified in writing** to Charter that the employer and all employees have not been convicted of, or do not have charges pending for a serious or violent felony, as defined by the California Penal Code.

By (Authorized Signature)

Date

Section 13: Tuberculosis Examination. Agency shall ensure that all persons performing services under this Agreement will provide a tuberculosis (TB) certificate of clearance prior to commencing services pursuant to this Agreement. Agency shall ensure that it will not place any person at a school without a valid TB certificate on file showing that the employee was examined and determined to be free from active tuberculosis, as defined in Education Code Section 49406.1(a).

Section 14: Agreement Contact Persons.

14.1 Charter: Gokhan Serce

Principal

Magnolia Science Academy-San Diego

6526 Estrella Ave

San Diego, CA 92120

P: 619.644.1300

E: gsecre@magnoliapublicschools.org

Copy to: Magnolia Educational & Research Foundation dba
Magnolia Public Schools
Chief Operations Officer
250 E 1st St., Suite 1500, Los Angeles, CA 90012
213. 628.3634

14.2 Agency: Steve Hensel

Executive Director
Expanded Learning Programs
YMCA of San Diego County
4451 30th Street
San Diego, CA 92116
P: 619.347.6917
E: shensel@ymcasd.org

Section 15: Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue for any action relating to this Agreement shall be in the State and Federal courts located in San Diego County.

Section 16: Compliance with Law. Agency and Charter shall be subject to, and shall comply with, all applicable Federal, State, and local laws and regulations applicable, including, but not limited to licensing, employment, and purchasing practices, and wages, hours, and conditions of employment, including non-discrimination.

Section 17: Facilities and Equipment. The Charter shall furnish physical facilities as reasonably necessary and appropriate for the Agency to perform services on Charter school sites. The Agency will directly purchase materials and equipment required for services unless an authorized Charter representative has requested pre-approval from the Agency for specific equipment or items over a specific dollar amount determined by Charter.

Section 18: Final Approval. This Agreement is of no force or effect until approved by the Charter's Board of Education and authorized signatures by Charter and the Agency.

Section 19: Entire Agreement/Amendment. This Agreement is 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. The Parties may amend this Agreement only by a writing signed by all Parties and approved by the Charter's governing board.

Section 20: Exhibits. This Agreement included the following exhibits, all of which are incorporated into this Agreement as if fully set forth herein:

Attachment A: 2024-25 Funding Allocations

Attachment B: Agency General Scope of Work/Services

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

YMCA of San Diego County

By (Authorized Signature)

Todd Tibbits
President & CEO

Date

Magnolia Science Academy-San Diego

By (Authorized Signatures)

Gokhan Serce
Executive Director
Magnolia Science Academy-San Diego
Magnolia Public Schools

Date

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

Date

Board Approval Date: _____

YMCA Federal EIN #: 95-2039198

			Regular School Year (180 Days)							Intercession				
School	Invoice Code		AM Program Enrollment	AM ASES ADA	AM ASES Pass-Through	PM Program Enrollment	PM ASES ADA	PM ASES Pass-Through	ELO-P (180 Days)	Intercession Projected Enrollment	Intercession ASES ADA	ELO-P Intercession	ASES Supplemental Pass-Through	Total
1	Magnolia	89-6906EL-Magnolia	0	0	\$0.00	70	60	\$106,584.31	\$36,051.00	40	0.00	\$10,996.00	\$0.00	153,631.31

AGENCY GENERAL SCOPE OF WORK/SERVICES

Attachment B

YMCA of San Diego County ("Agency") shall work collaboratively with Magnolia Science Academy-San Diego ("Charter") to operate expanded learning programs (before school programs, after school programs, intersession programs) and other youth enrichment activities for students and families within the Charter.

General Scope of Services

1. **After School Services.** The Agency will work collaboratively with the Charter to operate after school services at schools listed in Attachment A: 2024-2025 Funding Allocations. This shall include requirements that meet the After School Education and Safety (ASES) Program or Expanded Learning Opportunities Program (ELO-P) as appropriate. The Agency shall provide programs every regular school day, including days designated as "modified days" and "minimum days."
2. **Intersession Services.** The Agency will work collaboratively with the Charter to design and operate intersession services at Charter during a minimum of 30 non-instructional days. The program will offer full-day, intersession enrichment and learning opportunities for a minimum of 9 hours a day.
3. **Youth Enrichment Services.** The Agency will provide youth enrichment opportunities as requested by the Charter by providing direct services, subcontracted vendors, or other allowable activities requested and approved by the Charter.

Staffing

The Agency will provide staff in accordance with Charter health screening and fingerprint clearance and in accordance with the ASES Program or ELO-P requirements with the most stringent program requirements applied.

The Agency will ensure a maximum 20:1 participant to staff ratio for all grade levels.

The Agency will ensure at least one (1) administrative representative is present at all administrative meetings conducted by Charter.

The Agency shall ensure all employees hired for ASES Program or ELO-P shall meet the minimum requirements of an instructional aide in the Charter for all staff members working as part of the participant to staff ratio. This shall include successful completion of the Charter's instructional aide exam or by providing verification to Agency of at least 48 credits of completed college education or have an AA/AS degree or higher.

The Agency shall provide on-site staff members with the Charter's approved logo shirt and a photo identification badge to be worn when on campus.

The Agency shall provide all necessary training and supervision of staff to meet all requirements of the Charter, ASES Program, and the ELO-P. This shall include but not limited to, health and safety, child abuse reporting, and other topics appropriate for each service area. The Agency agrees to authorize staff to participate in training as determined by the Charter.

Program Days and Hours of Operation

The Agency shall provide after school services to all assigned schools based on the school's calendar and bell schedule.

The Agency shall operate the after school program immediately after school is dismissed and continuing until at least 6:00 P.M. or a minimum of hours that combined with instructional time, recess, lunch, and expanded learning opportunities were no less than nine (9) hours on all individual school days.

The Agency shall operate services adhering to the established days and hours of operation that have been mutually agreed upon between the Agency and Charter. The Parties must mutually agree in writing to increase or decrease days and/or hours of any program or service during the contractual agreement.

Enrollment and Daily Attendance Requirements

The agency will enroll participants at each school site based on the requested Charter enrollment reflected in Attachment A: 2024-2025 Funding Allocations. Both parties can mutually agree to increase and decrease enrollment as needed based on school needs and available funding from Charter.

The Agency will implement daily written attendance procedures for all participants in program activities.

The Agency will adhere to the Charter's established policies for reasonable early release of students in the after school program and reasonable daily late arrival of students in the before school program for all ASES Program sites.

The Agency will utilize the Cityspan attendance and enrollment systems provided by the San Diego County Office of Education (SDCOE) unless otherwise instructed by the Charter.

The Agency will ensure all participants are signed-in and signed-out of the program requiring all authorized parent(s)/guardian(s) to verify identity through picture identification if unknown by Agency staff member.

The Agency will retain written attendance records for a minimum of 5 years and make records available upon request from Charter.

Compensation

The Agency will provide an initial estimate of total costs or grant awards in Attachment A: 2024-2025 Funding Allocations.

The Agency shall spend at least 85% of program expenditures on direct services with no more than 15% total administrative costs for all services and including no more than 5% indirect costs on ASES Program expenditures and no more than the Agency federally approved indirect cost rate on ELO-P expenditures.

The Agency shall utilize all ASES Program funding before requesting additional reimbursement of PM program expenditures from the ELO-P.

Other Operational Requirements

The Agency will collaborate with Charter to provide a daily nutritious snack and/or meal, or breakfast for attending students.

The Agency will submit data and reports and maintain pertinent records as required for a minimum of 5 years.

The Agency will maintain an inventory record for each piece of equipment, with an acquisition cost of \$500 or more per unit that is purchased with Charter funds. The record describes the acquisition by type, model, serial number, funding source, acquisition date, cost, location, current condition, and transfer or disposition of obsolete or unusable equipment.

The Agency will provide parents with information on school programs, meetings, and activities in a format and to the extent practicable, in a language the parents can understand. If 15 percent or more of students enrolled in a school speak a single primary language other than English, as determined by language census data from the preceding year, all notices, reports, statements, and records sent to parents of such students are written in English and the primary language and may be responded to either in English or the primary language.

The program will provide daily opportunities for physical activity and an educational or literacy element in which homework assistance is provided.