



Board Agenda Item #	Agenda #II D- Consent Items
Date:	January 18, 2018
To:	Magnolia Board of Directors
From:	Caprice Young, Ed.D., CEO & Superintendent
Staff Lead:	Erdinc Acar, Regional Director/Gokhan Serce, Principal-San Diego
RE:	Approval of MSA-SD After School ASES Grant and Service provider

**Proposed Board Recommendation**

I move that the board authorize Dr. Caprice Young, CEO and Superintendent of MPS, to sign the Memorandum of Agreement (MOA) for the MSA – SD After School ASES Program with San Diego County ASES Consortium and service provider YMCA of San Diego County (YMCA).

**Background**

The ASES Program funds the establishment of local after school education and enrichment programs. These programs are created through partnerships between schools and local community resources to provide literacy, academic enrichment and safe constructive alternatives for students in kindergarten through ninth grade (K-9).

Currently, MSA-SA provides serves about 70 students in the ASES after school program.

MSA-SD is a part of after school program consortium with the San Diego County Office of Education(SDCOE). The funding for the After School ASES program is provided through a grant from California Department of Education. SDCOE disburses funds to schools with MOUs. On Jan 11, 2018, MSA-SA received an MOU from SDCOE regarding the grant approval of \$88,452.

YMCA of San Diego County (YMCA) has been MSA-SD’s after school service provider for the past six years. MSA- SD signs a yearly service agreement with the YMCA for the services as outlined in the ASES grant. The term of this agreement is July 1, 2017 through June 30, 2018 with an amount of \$84,029.40.

**Budget Implications**

ASES is a state grant and needs to be disbursed in compliance with the California ED Code. The fiscal agent reimburses MSA-SD for the expenses occurred by the YMCA. All income and expenses are budgeted accordingly. ASES grant amount covers expenses for the service provider.

**Funding Source:** ASES grant money through SDCOE consortium

**How Does This Action Relate/Affect/Benefit All MSAs?**

No perceived effect on other MSAs

**Name of Staff Originator:** Gokhan Serce

**Exhibits (attachments):**

1. Memorandum of Agreement for the After School Education & Safety (ASES) Program with SDCOE
2. Memorandum of Agreement for the After School Education & Safety (ASES) Program service provider with YMCA
3. MSA-San Diego ASES Subcontractor Attachment (Excel sheet)

San Diego County Office of Education  
Expanded Learning Unit, Student Support Services

MEMORANDUM

Date: January 8, 2018

To: After School Education and Safety Program (ASES) District Contacts

From: Daymon Beach, Senior Manager, Student Support Services

Re: After School Education and Safety Program (ASES) contract for  
Fiscal Year 2017-2018

Enclosed are 2 originals of the contract for your district's ASES FY 2017-2018.

To execute the contract, please complete the following steps to all 2 contract originals:

1. **Page 10:** Under Item 12 District/Charter & County Contact Persons' Names & Addresses, complete the *district contact* information with current district contact name, address, phone number, and email address.
2. **Page 15:** Under Item 28, Entire Agreement, complete "*District*" section and obtain District Authorized signature.
3. **Page 13:** Obtain *Certificate of Insurance*, as referenced under **Item 22. Insurance Requirements**, and return with executed contracts. Grant payments will not be issued unless certificates are on file with the County.

**Retain 1 fully executed original, and return remaining 1 ORIGINAL, by first class mail to:**

San Diego County Office of Education  
Student Support Services  
Expanded Learning Unit  
Attn: Daymon Beach  
6401 Linda Vista Rd., Room 212E  
San Diego, CA 92111

If you have any questions, please contact Anabel Mireles @ (858) 569-3131 or [anabel.mireles@sdcoe.net](mailto:anabel.mireles@sdcoe.net).

DB: am

Enclosures

RECEIVED  
JAN 11 2018  
Initiat: SD

## MEMORANDUM OF AGREEMENT

This Agreement for the After School Education and Safety (ASES) is entered into this 1st day of July 2017 by and between the **San Diego County Superintendent of Schools** (herein known as "SDCOE" or "County") and **Magnolia Science Academy San Diego** (herein known as "Charter School") who agrees to provide the services in accordance with the provisions of the California *Education Code* (EC) sections 8484.7-8484.9. Failure to comply with the following grant rules, regulations, and policies may result in denial of the remaining grant amount and an invoice from the County to the Charter School for up to the entire grant amount allocated for the ASES Program. Any invoice from the California Department of Education (CDE) to the County due to the Charter School's failure to comply with grant rules, regulations and policies will result in the Charter School reimbursing the full invoice amount(s) to the County within 30 days of submission of such invoice(s).

### **1. General Conditions:**

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

1. The After School Program will begin operation immediately upon the end of the regular school day and operate until at least 6:00 pm for a minimum of 15 hours per week, and on every "regular school day" and any day that students attend and instruction takes place.
2. For After School programs, provide program services for a minimum of three hours and at least up to 6:00 p.m. every regular school day. For Before School programs, provide program services for a minimum of 1 1/2 to 2 hours every school day as stipulated in the individual application.
3. Elementary students to participate every day that the after school component operates. Middle school and/or Junior high school should participate a minimum of nine (9) hours a week and three (3) days a week to accomplish ASES after school component program goals.
4. Establish a policy for early release of students attending the ASES after school component needing to leave a program before closing which includes written parental permission stating the dates, times, and reasons for the early release. However, the after school component must remain open until at least 6:00 p.m.
5. Ensure that Elementary students participate in every day's activity that the ASES before school component is operational. Middle school or Junior high school should participate a minimum of six (6) hours a week or three (3) days a week to accomplish program goals.
6. Establish a policy for late arrival of those students attending the ASES before school component needing to arrive late to the before school component of the program. This late arrival policy should include parental permission stating dates, times and reasons for the late arrival.
7. To ensure that subsequent ASES grant awards will not be reduced due to insufficient program attendance and performance, Charter School 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 semiannual attendance reporting and requirements as described in Section 8482.3 once every three years:

- i. 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.
- ii. 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.
- iii. 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. In FY 17/18 Charter School receiving ASES funds must implement the City Span Web-based Attendance Tracking System ([www.youthservices.net/sandiego](http://www.youthservices.net/sandiego)) for daily program attendance entry.
2. Charter School must fully utilize the “Automated Card Scanning” capability for the system. The City Span Web-based Attendance Tracking System will ensure that full attendance is documented only for students complying with their individual Early Release/Late Arrival times on file in accordance with ASES Program California Education Code Section and the intent of the Early Release/Late Arrival Policies for students in the ASES program.
3. Use the web-based attendance system’s card scanning features to ensure that all students are counted for attendance purposes in compliance with *EC* Section 8483(a)(1) and *EC* Section 8483(1)(a)(1).
4. Should Charter School choose not to implement the City Span System the Charter School must provide a description and demonstration of their attendance tracking system to SDCOE for review. All Charter Schools choosing not to use the SDCOE Web-based Attendance System must fully demonstrate that the attendance system they implement has the necessary capability to ensure that full attendance is documented only for students complying with their individual Early Release/Late Arrival times on file in accordance with ASES Program California Education Code Section and the intent of the Early Release/Late Arrival Policies for students in the ASES program. Also, all Charter Schools choosing not to use the City Span system must use daily automated attendance features that will ensure that all students that are counted for attendance purposed follow *EC* Section 8483(a)(1) and *EC* Section 8483(1)(a)(1). All non-City Span systems will be reviewed by SDCOE staff to ensure State Audit Guide and California Education Code compliance. Each Charter School will be subject to site review of the attendance procedures at a minimum of 15 ASES programs. During the attendance review the Charter School’s system must ensure

that all Early Release/Late Arrival Policies as well as ensure that all students that are counted for attendance purposed follow *EC* Section 8483(a)(1) and *EC* Section 8483(1)(a)(1).

5. Charter School will identify key staff members to participate in trainings provided by SDCOE/City Span for implementation of the new Card Scanning System.
6. In addition, Charter School must monitor on a weekly basis that all student sign-in (AM Program) and sign-out (PM Program) times comply with the Early Release/Late Arrival times on file for each student.

### **3. Staffing Requirements:**

1. Charter School must ensure a student-to-staff ratio of no more than 20 to 1 at all ASES sites.
2. Charter School 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 the Charter School.
3. Charter School shall be solely responsible for students, staff, and parents accessing services under this Agreement. Charter School certifies that it shall provide adequate supervision of the students, parents, staff, trainees and other providers, and that its staff will follow legal guidelines on reporting child abuse/neglect.
4. Charter School must certify that all personnel providing services to students are adequately screened so as to prevent the assignment of personnel who may pose a threat to the safety and welfare of students, and that such personnel has already provided evidence of freedom from tuberculosis prior to starting service at the school site.
5. Charter School must reserve the right to accept or reject the assignment of any personnel and the right to remove him/her from Charter School's premises

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

1. Participate in statewide evaluation process as determined by the CDE and provide all required information.
2. Respond to additional surveys or other methods of data collection that may be required throughout the duration of the program.
3. Annually provide participating pupils' regular school day and program attendance and test results as required by CDE.
4. To standardize procedures and collection tools developed for evaluation purposes.
5. Ensure the timely and accurate collection of data required to conduct the ASES program evaluations including but not limited to Annual Performance Reports.
6. Charter School will submit an annual ASES Program Continuous Quality Improvement Plan (CQI) at the Charter School and site level as required by California Senate Bill (SB) 1221. These requirements are codified in Section 8484 of the 2017 California Education Code. While the quality improvement process should be undertaken at the program level, Charter School is responsible for ensuring that it is fully implemented at all of their sites. Charter School is required to report the CQI via the City Span Web-based Attendance and Fiscal Management System by October 10, 2017. Charter School is also responsible for following the county-wide CQI process that has been established by Educational Resource Consultants (ERC).

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

1. Distribute allocated funds to participating schools and ensure fiscal responsibility in accordance with CDE guidelines. This includes a reimbursement calculation formula that is consistent with CDE guidelines that provide for a rate of \$8.19 per student per day for PM (After School) reimbursement and a rate of \$5.46 per student per day for AM (Before School) reimbursement.
2. Allow participation of any student of a participating school regardless of their ability to pay.
3. Upon notification of overpayment of the ASES grant in excess of the grant award amount or request for reimbursement of unexpended ASES grant funds by the CDE, the Charter School will be required to return the entire amount of funding in question to the SDCOE.
4. 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, the EC.
5. 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.

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

1. The Charter School follows all fiscal and auditing standards required by the CDE. (EC §§ 8482.3(f) (5), 8484.8(b) (3), (4).).
2. Provide a copy of Federal Program Monitoring (FPM) and Annual Program Audit findings/exceptions to SDCOE 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 2017-2018; Article 3.1. § 19846. After School Education and Safety Program.
3. Participate in Federal Program Monitoring (FPM) training as conducted by SDCOE.

**7. Budget Restrictions**

1. No more than 15% of the grant monies may be used for administrative costs (including indirect costs equal to the lesser of 5% of the grant amount or the Charter School approved CDE indirect cost rate).
2. Each grantee must expend at least 85% of grant funding directly for pupils.
3. Identify and secure Matching Funds/In-Kind Contributions for the ASES program that garner cash or contributions to the equal to at least 33% or one-third of the total annual grant amount for Charter School. Charter School is required to submit the 33% Match/In-Kind via the City Span Web-based Attendance and Fiscal Management System by October 10, 2017.
4. No more than 15% of the annual grant amount may be used for start-up costs in year one only.
5. Funds must supplement, not supplant, existing services. Programs cannot use ASES funds to pay for existing levels of service.
6. Only sites operating programs are eligible to claim administrative, operational, and/or start-up.

7. The LEA/grantee agency maintains an inventory record for each piece of equipment, with an acquisition cost of \$500 or more per unit that is purchased with state and/or federal funds. Also, Charter School has conducted a physical check of the inventory of equipment within the past two years and has reconciled the result with inventory records. (34 CFR 80.32(d) (2).) Charter School will also be required to report and all Inventory Items via the City Span Web-based Attendance and Fiscal Management System by October 10, 2017.
8. The record describes the acquisition by:
  - (a) Type
  - (b) Model
  - (c) Serial number
  - (d) Funding source
  - (e) Acquisition date
  - (f) Cost
  - (g) Location
  - (h) Current condition
  - (i) Transfer, replacement, or disposition of obsolete or unusable equipment EC § 35168; 5 CCR 3946; 34 CFR 80.32(d) (I).)
9. To ensure that Charter School follows all fiscal and auditing standards required by the California Department of Education (EC §§ 8482.3(f)(5), 8484.8(b)(3), (4).), Charter School can be required to provide copies of the following documents to SDCOE:
  - Before and After School Program (BASP) contracts – for ASES subcontracts to provider agencies that operate Before and/or After School Programs.
  - BASP duty statements and/or job descriptions that are related to the cost that are associated with operating the BASP.
  - BASP reports program expenditures at the Charter School and site level that clearly demonstrate that the 85/15 requirement is met. Charter School will be required to submit the 85/15 reports via the City Span Web-based Attendance and Fiscal Management System by October 10, 2017.
  - BASP line item budgets.
  - BASP time sheets, including time accounting methods.

**8. Additional ASES Program Operation Requirements.**

1. Designate an ASES Contact person.
2. Ensure the designated ASES Contact attends the scheduled ASES Charter School Contact meetings provided by the After School Administrative Program Support Center (ASC), the Children’s Initiative (CI), and the San Diego County Office of Education.
3. Operate the ASES Program to improve academic achievement and provide safe and healthy recreation and prevention activities for students at qualified school sites.
4. Commit resources to ensure the delivery of integrated, age-appropriate ASES programs.
5. 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.



6. The program will have an educational enrichment element that may include, but not limited to fine arts, recreation, health awareness, physical fitness and prevention activities. Such activities should be determined based on students' needs and interests.
  7. Plan the program through a collaborative process that includes parents, youth, and representatives of participating public school sites, governmental agencies (e.g. city and county parks and recreation departments), local law enforcement, community organizations, and the private sector.
  8. If the site is not located on a school campus, it must be as accessible and available as the school site with safe transportation being provided by Charter School or designee to enrolled pupils.
  9. Provide a snack that conforms to nutrition standards as established by the U.S. Department of Agriculture.
  10. Provide information regarding the After School Program in a form and language that is easily understandable to all parents.
  11. Each partner in the application will share responsibility for the quality of the program.
  12. Collaborate and coordinate with the regular school day program.
  13. Identify, assign, and maintain indoor/outdoor space at participating school sites that are to be utilized by the ASES program.
  14. Notify the County in the event the Charter School intends to close or relocate an ASES program school site, either temporarily or permanently.
  15. All staff and volunteers will fulfill health screening and fingerprint clearance requirements in current law according to Charter School policy
  16. Each ASES funded Charter School will be responsible for the development of a FY 2017-2018 After School Program Plan as part of the San Diego ASES program Consortium. The Charter School's ASES Program Plan template has been provided by the California Department of Education. Working in collaboration with the Charter School Contact, Site Coordinator, Site Principal and other CBO partnerships the Charter School ASES program plan is due on October 17, 2018 to SDCOE via City Span.
  17. Charter School staff will review the ASES program plan annually and provide updates and/or revisions based on ASES program components, California Department of Education guidelines, identified Charter School program changes based on grant reduction or new sites.
  18. Each Charter School ASES Program plan will identify FY 2017-2018 Attendance Goals described in Section VII of the San Diego Consortium After School Program Plan.
  19. Ensure that ASES staff attends countywide, regional, and Charter School-training opportunities designed to maximize program effectiveness.
  20. Host scheduled technical assistance site visits conducted by staff from the After School Administrative Program Support Center (ASC) and the Children's Initiative.
  21. Work with staff from the ASC and the Children's Initiative to review site visitation and technical assistance reports and plan for continuous program improvement.
  22. Ensure the proper record keeping and documentation of program activities and the timely submission of all required reports.
  23. Contribute 3% from the grant funds to SDCOE for countywide program coordination, training, technical assistance and administrative support.
- 9. As the official Grantee of Record, the County will provide the following:**

1. In coordination with Charter School, inform statewide after school efforts impacting San Diego County by working with the California Department of Education, the Governor's Office, the Office of the Secretary of Education, the Department of Finance, the California State Legislature, and the California Advisory Committee on Before and After School Programs.
2. In coordination with Charter School, educate and involve stakeholders and elected officials including: parents, government agencies, community organizations and the private sector in after school issues and efforts.
3. Serve as the fiscal, technical, and program liaison between the Charter Schools, school sites, and the California Department of Education regarding the ASES programs.
4. Maintain files of MOAs and invoices submitted by implementing Charter Schools.
5. Establish and maintain master files of ASES participants, funding levels, attendance, expenditures, allocations and payment transmittals.
6. Verify all ASES funding levels and allocations based on official records provided by CDE.
7. Ensure the timely collection of all required data and submission of evaluation reports, and incur the associated sub-contracted costs, as negotiated.
8. Develop, verify, and obtain appropriate signatures on all required ASES reports for submission to CDE.
9. Using information provided by CDE, prepare end of grant reconciliation reports and submit to CDE by the required deadlines.
10. Provide funding notification and payment distribution to Charter Schools in a timely manner.
11. Ensure that program goals are met efficiently and effectively.
12. Ensure that information on fiscal requirements is shared with all partners expeditiously.
13. Compile required annual progress reports and submit them in a timely manner.
14. Share data on program process and outcomes via Charter School Contact meetings and Consortium Steering Committee meetings.
15. Convene, in coordination with the Charter School, meetings of after school stakeholders, as necessary.
16. Coordinate any publicity, press releases or media coverage of programs with Charter School prior to release and distribution.
17. Ensure that all staff positions, project materials, or services funded with the 3% consortium fee directly provide and serve the county's ASES funded before and after school programs.
18. Provide training and technical assistance to Charter Schools in San Diego County in excess of those provided through the ASC resources.
19. Ensure the development and maintenance of a web-based attendance reporting system for use of all consortium members for Phase I (Charter School Monthly Attendance Reporting). Additionally, provide Phase II (Daily Site Attendance Reporting) and Phase III (Student Uploading of data from Infinite Campus) as venues to participating Charter Schools.
20. Ensure consortium-wide program evaluation and the preparation of CDE required evaluation reports.
21. Conduct annual needs assessment and convene task forces for needed areas of program training, technical assistance, products and support.
22. With input from consortium members, develop protocols for site visits, information sharing, advocacy, public relations and marketing activities, and other events impacting

after school programs.

23. Provide training and technical assistance in preparation for Federal Program Monitoring (FPM) visits from California Department of Education. This preparation will include mock site visits.

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

1. All statutes and regulations applicable to each program under which state funds are made available through this application will be met by the Charter School in its administration of each site program. The Charter School will follow its program plans as specified by the agency application.
2. Charter School will make reports to the County as necessary to enable the County to perform its duties and will maintain such records and provide access to those records as the County deems necessary. The Charter School shall maintain such records for at least five years after the completion of the activities for which the funds are used.
3. Charter School 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.)
4. **Record revenues and expenditures for this grant as follows: for Standardized Account Code Structure (SASC) coding, use Resource Code 9065 and Revenue Object Code 8677. For expenses, use Goal 7111 – Non agency Educational appropriation function and object code where the funds are expended.**
5. 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.
6. The grantee shall use these funds in accordance with the approved application.
7. If a program participant receives state funds to operate ASES in excess of the amount warranted due to the program failing to operate and the program serving fewer pupils than planned, raising an inadequate amount of matching funds, failing to expend funds fully or any other reason during the grant period, the county shall reduce any subsequent allocations by the amount equal to the overpayment.
8. If an ASES program site stops program operations, the county will bill the agency for the amount of the overpayment. If payment is not received within three months of the billing invoice date, any overpayment will be withheld from the next payment to the Charter School.
9. Charter School shall submit quarterly expenditure reports and program reports (including evaluation reports) as required. **FAILURE TO SUBMIT INTERIM REPORTS AS REQUIRED MAY RESULT IN DENIAL OF THE REMAINING GRANT AMOUNT. FAILURE TO SUBMIT AN ANNUAL EXPENDITURE REPORT WITHIN THREE MONTHS OF THE REPORTING DATE MAY RESULT IN DENIAL OF THE REMAINING GRANT AMOUNT.**
10. **FAILURE TO SUBMIT A FINAL EXPENDITURE REPORT WITHIN SIX MONTHS OF THE REPORTING DATE WILL RESULT IN A BILLING FROM**

**THE CDE FOR THE ENTIRE AMOUNT OF ANY GRANT FUNDS ADVANCED AND POSSIBLE REDUCTION OF ANY SUBSEQUENT YEARS' GRANT (S).**

11. Charter School shall comply with the General Assurances attached to this MOA.
12. This award is made contingent upon the availability of funds. If the Legislature takes action to reduce or defer the funding upon which this award is based, then this award will be amended accordingly.
13. The CDE GRANT NO., FY, PCA, VENDOR NO., and SUFFIX as specified below will be used on all communications:

**CDE GRANT NO. 37-24239-1037-EZ FY 17/18: PCA: 24239  
VENDOR NO. 1037: SUFFIX NO. EZ**

**11. PERIOD OF AGREEMENT- COMPENSATION/COST AND PAYMENT**

**SCHEDULE**

According to the terms of the ASES Program (ASES) grant, the term of this Agreement shall be July 1, 2017 through June 30, 2018.

The After School Education and Safety Programs are considered direct grants and CDE shall pay grantees (County) according to the following schedule authorized in Education Code 8482.4:

“The department shall allocate 65 percent of the first-year grant amount no later than 30 days after the grantee submits the grant award acceptance letter to the CDE. Of the remaining 35 percent of the grant, the CDE shall allocate 25 percent or more of the funds within the operational period of the program and may retain up to 10 percent of the total grant until all administrative requirements of the grant have been met.”

Program funds will be dispersed to Charter School based on Education Code 8482.4 reimbursement from CDE. Annual ASES allocation(s) **shall not exceed \* \$88,452.00** for Charter School. However, Charter School will only report expenditure up to \$85,798.44 (97% of \$88,452.00) and will receive a total of \$85,798.44 if the Charter School expends all their grant allocation and is in compliant with all grant requirements.

**Payments of the grant may actually differ from the granted amount as determined by CDE due to: 1) Non operation of a program at a school sites or non-operation of a funded grant component. 2) The Charter Schools inability to expend the total grant award by the June 30, 2018 final expenditure deadline for all ASES grant funds as determined by CDE. 3) Any ASES program Audit Findings or Program Compliance issues that result in the reduction of grant award or repayment of expended ASES funding will be paid by Charter School.**

**All payments will be made by SDCOE subsequent to actual receipt of funds from CDE.**  
*\* SDCOE will retain 3% of grant funds for countywide program coordination, technical assistance and program support, as agreed herein and this should not be reported in the district expenditure report.*

**12. CHARTER SCHOOL & COUNTY CONTACT PERSONS' NAMES & ADDRESSES**

Charter School Contact:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

County Contact:

Daymon Beach, Senior Manager  
SDCOE, Student Support Services  
6401 Linda Vista Road, Rm 212E  
San Diego, CA 92111  
(858) 569-3133

**13. CONFIDENTIALITY**

1. This agreement, all communications and information obtained by Charter School from the County Office relating to this agreement, and all information developed by Charter School under this agreement, are confidential. Except as provided in Subsection 3, without the prior written consent of an authorized representative of the County, Charter School 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, Charter School shall inform the County, in writing, of the nature and reasons for such disclosure. Charter School shall not use any communications or information obtained from the County for any purpose other than the performance of this agreement, without the County's written prior consent.
2. At the conclusion of the performance of this agreement, Charter School shall return to the County all written materials constituting or incorporating any communications or information obtained from the County. Upon the County's specific approval, Charter School may retain copies of such materials, subject to the requirements of Subsection 1.
3. Charter School may disclose to any subcontractor, or County approved third parties, any information otherwise subject to Subsection 1 that is reasonably required for the performance of the subcontractor's work. Prior to any such disclosure, Charter School shall obtain the subcontractor's written agreement to the requirements of Subsection 1 and shall provide a copy of such agreement to the County.
4. Charter School represents that it shall not publish or cause to be disseminated through any press release, public statement, or marketing or selling effort any information which relates to this agreement without the prior written approval of the County.
5. Charter School obligation of confidence with respect to information submitted or disclosed to Charter School by County 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**

Identities of all respondents including but not limited to staff, principal(s), parent(s), student(s) and individual responses on surveys in conjunction with this evaluation will be kept confidential by the Contractor. Reports generated will reflect aggregated data. No individual responses will be used. Contractor is not authorized to redistribute or share any data or information with any agency, entity or individual without the written consent of the County.

Contractor agrees to all of the following:

(a) Neither Contractor nor any of its Subcontractors shall disclose Private Information obtained from the County in the performance of this Agreement to any other Subcontractor, person, or other entity, unless one of the following is true:

- (i) The disclosure is authorized by this Agreement;
- (ii) The Contractor received advance written approval from the Contracting Department to disclose the information; or
- (iii) The disclosure is required by law or judicial order.

(b) Notwithstanding any other provisions of law, any school Charter School, including any county office of education or superintendent of schools, may participate in an interagency data information system that permits access to a computerized database system within and between governmental agencies or Charter Schools as to information or records which are non-privileged, and where release is authorized as to the requesting agency under state or federal law or regulation, if each of the following requirements are met:

- (i) Each agency and school Charter School shall develop security procedures or devices by which unauthorized personnel cannot access data contained in the system.
- (ii) Each agency and school Charter School shall develop procedures or devices to secure privilege or confidential data from unauthorized disclosure.
- (iii) Each school Charter School shall comply with access log requirements of Section 49064.
- (iv) The right of access granted shall not include the right to add, delete, or alter data without the written permission of the agency holding the data.
- (v) An agency or school Charter School may not make public or otherwise release information on an individual contained in the database where the information is protected from disclosure or release as to the requesting agency by state or federal law or regulation.

(c) Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement. Any disclosure or use of Private Information authorized by a Contracting Department shall be in accordance with any conditions or restrictions stated in the approval.

(d) Any failure of Contractor to comply with the Nondisclosure of Private Information Ordinance 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, the County may terminate this Agreement, debar Contractor, or bring a false claim action against Contractor.

#### **15. TERMINATION FOR CONVENIENCE**

1. The County may, by written notice to Charter School, terminate this agreement in whole or in part at any time, for the County's convenience. Upon receipt of such notice, Charter School shall:
  - a) Immediately discontinue all services affected (unless the notice directs otherwise); and
  - b) Deliver to the County 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 Charter School of such notice.
2. If the termination is for the convenience of the County, Charter School shall submit a final invoice within 60 days of termination and upon approval by the County, the County shall pay Charter School the sums earned for the services actually performed prior to the effective date of termination and other costs reasonably incurred by Charter School to implement the termination.
3. Charter School shall not be entitled to anticipatory or consequential damages as a result of any termination under this section. Payment to Charter School in accordance with this section shall constitute the Charter School's exclusive remedy for any termination hereunder. The rights and remedies of the County provided in this section are in addition to any other rights and remedies provided by law or under this agreement.

#### **16. TERMINATION FOR DEFAULT**

1. The County may, by written notice to Charter School, terminate this agreement in whole or in part at any time because of the failure of Charter School to fulfill its contractual obligations. Upon receipt of such notice, Charter School shall:
  - a) Immediately discontinue all services affected (unless the notice directs otherwise) and
  - b) Deliver to the County 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 Charter School of such notice.
2. If the termination is due to the failure of Charter School to fulfill its contractual obligations, the County may take over the services, and complete the services by contract or otherwise. In such case, Charter School shall be liable to the County for any reasonable costs or damages occasioned to the County thereby.

**17. INDEPENDENT CONTRACTOR**

It is expressly understood that at all times, while rendering the services described herein, and in complying with any terms and conditions of this Agreement, Charter School is acting as an independent contractor and not as an officer, agent, or employee of the County.

**18. HOLD HARMLESS**

Charter School agrees to hold harmless, defend, and to indemnify the County, its officers, agents, and employees against any and all losses, injuries, claims, actions, judgments, and liens arising from, or alleged to have arisen from, Charter School performance, or lack thereof, under this Agreement.

**19. WORKERS' COMPENSATION**

Charter School shall provide workers' compensation insurance or shall self-insure their services in compliance with provisions of Section 3700 of the Labor Code of the State of California. A Certificate of Insurance may be provided, providing for such, or Charter School shall sign and file with the County the following certificate:

“I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provision of that Code, and I will comply with such provision before commencing the performance of the work of this Agreement.”

**20. NON-FUNDING**

Notwithstanding any of the foregoing provisions, if for any fiscal year of this Agreement the San Diego County Board of Education fails to appropriate or allocate funds for future periodical payments under this Agreement, the County 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**

Charter School agrees to maintain and preserve until five years after termination of the Agreement with the County, 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**

Charter School must ensure that it shall maintain and shall cause each Subcontractor to maintain Public Liability and Property Damage Insurance to protect them and the Superintendent of Schools from all claims for personal injury, including accidental death, as



well as from all claims for property damage arising from the operations under this Agreement. The minimum amounts of such insurance shall be as hereinafter set forth.

Amounts of Insurance:

General Liability Comprehensive form - Products/Completed Operations	Bodily Injury and Property Damage	<u>\$1,000,000</u> Amount
---	--------------------------------------	------------------------------

Auto Liability Comprehensive form - Owned, Non-owned Hired	Bodily Injury and Property Damage Combined	<u>\$1,000,000</u> Amount
--	--	------------------------------

Charter School shall file, with the County, Certificates of Insurance indicating a thirty-day (30) cancellation notice and naming the **SAN DIEGO COUNTY SUPERINTENDENT OF SCHOOLS** 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**

Charter School 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. FINAL APPROVAL**

This Agreement is of no force or effect until approved by signature by the County Superintendent of Schools or his designee, the Assistant Superintendent of Business Services.

**26. TOBACCO-FREE FACILITY**

The County is a tobacco-free facility. Tobacco use (smoked or smokeless) is prohibited at all times on all areas of County Office property.

**27. PUPIL SAFETY / SCHOOL SAFETY ACT**

Pupil Safety/School Safety Act: The SDCOE Program Manager has determined that the Contractor/Provider will have “**greater than limited contact**” with pupils and the Contractor/Provider shall require their employees, including the employees of any

subcontractor, who will provide these services, to submit their fingerprints in order to conduct a criminal background check per Education Code §45122.1. The Contractor/Provider 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 Contractor/Provider has **certified in writing** to the SDCOE Program Manager that the employer and all of these employees have not been convicted of, or do not have charges pending for a defined felony.

**28. ENTIRE AGREEMENT**

This Agreement represents the entire Agreement and understandings of the parties hereto and no prior 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.

**SAN DIEGO COUNTY  
SUPERINTENDENT OF SCHOOLS**

  
By (Authorized Signature)

Paul Gothold Ed.D  
Name (Type or Print)

County Superintendent of Schools  
Title

1/5/18  
Date

**MAGNOLIA SCIENCE  
ACADEMY SAN DIEGO**

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

\_\_\_\_\_  
Name (Type or Print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**San Diego County Office of Education  
Funding Status per School  
2017-2018**

Grant Number	District Name	CDS Code	School Name	School Type	Sub Program	Amount Awarded
37-24239-1037-EZ	Magnolia Science Academy SD	37683380109157	Magnolia Science Academy San Diego	E	After School Base	\$98,452.00
					<b>TOTAL GRANT AMOUNT</b>	<b>\$98,452.00</b>
					<b>GRANT AMOUNT, LESS 3%</b>	<b>\$85,798.44</b>

**MEMORANDUM OF AGREEMENT**  
After School Education & Safety (ASES)

This Agreement to provide services for the After School Education) is entered into this 1st day of July 1, 2017 by and between the **Magnolia Science Academy-San Diego** (herein known as “Magnolia Science Academy” and **YMCA of San Diego County (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 immediately upon the end of the regular school day and operate until at least 6:00 pm for a minimum of 15 hours per week, and on every “regular school day” and any day that students attend and instruction takes place.
2. Elementary students should participate every day that the after school component operates.
3. Establish a local policy for early release of students attending the ASES after school component needing to leave a program before closing which includes written parental permission stating the dates, times, and reasons for the early release. However, the after school component must remain open until at least 6:00 p.m.
4. To ensure that subsequent ASES grant awards will not be reduced due to insufficient program attendance and performance, YMCA of San Diego County 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:
  - i. 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.
  - ii. 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.
  - iii. 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. In FY 17-18, the YMCA of San Diego County will implement the *City Span Web-based Attendance Tracking System* ([www.youthservices.net/sandiego](http://www.youthservices.net/sandiego)) for daily program attendance entry.
2. YMCA of San Diego County must fully utilize the “*Automated Card Scanning*” capability for the system. The *City Span Web-based Attendance Tracking System* will ensure that full attendance is documented only for students complying with their individual Early Release/Late Arrival times on file in accordance with ASES Program California Education Code Section and the intent of the Early Release/Late Arrival Policies for students in the ASES program.
3. Use the web-based attendance system’s card scanning features to ensure that all students are counted for attendance purposes in compliance with *EC* Section 8483(a)(1) and *EC* Section 8483(1)(a)(1).
4. YMCA of San Diego County will identify key staff members to participate in trainings provided by SDCOE/City Span for implementation of the *City Span Web-based Attendance Tracking System*.
5. In addition, YMCA of San Diego County must monitor on a weekly basis that all student sign-in (AM Program) and sign-out (PM Program) times comply with the Early Release times on file for each student.
6. Magnolia Science Academy will facilitate monthly attendance reporting and reconciling with the SDCOE.

**3. Staffing Requirements:**

1. YMCA of San Diego County must ensure a student-to-staff ratio of no more than 20 to 1.
2. YMCA of San Diego County 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 the Magnolia Science Academy.
3. YMCA of San Diego County shall be responsible for students, staff, and parents accessing services under this Agreement. YMCA of San Diego County 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. YMCA of San Diego County must certify that all personnel providing services to students are adequately screened so as to prevent the assignment of personnel who may pose a threat to the safety and welfare of students, 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 Magnolia Science Academy 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 Magnolia Science Academy 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. Magnolia Science Academy will share evaluation data reports with YMCA of San Diego County to use for quality improvement plan.

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

1. Upon notification of overpayment in excess of the grant award amount or request for reimbursement of unexpended ASES grant funds by the CDE, Magnolia Science Academy or YMCA of San Diego County will be required to return the entire amount of funding in question to the San Diego County Office of Education.
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.

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

1. Magnolia Science Academy shall provide a copy of Federal Program Monitoring (FPM) and Annual Program Audit findings/exceptions to SDCOE 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 Magnolia Science Academy and YMCA of San Diego County personnel shall participate in Federal Program Monitoring (FPM) training.
3. Both Magnolia Science Academy and YMCA of San Diego County will attend Federal Program Monitoring (FPM) meetings with the CDE.

**7. Budget Restrictions** (See YMCA of San Diego County ASES 2017-18 85-15 Sub-Contractor Attachment)

1. The San Diego County Office of Education shall retain 2% or \$1769.04 of total grant funds for direct administrative costs.
2. Magnolia Science Academy shall retain 3% or \$2653.56 of total grant funds for direct administrative costs.
3. The YMCA of San Diego County shall receive 5% or \$4422.60 for indirect costs.
4. No more than 5% or \$4422.60 of direct administrative costs shall be expended by YMCA.
5. The YMCA must expend at least 85% or \$75184.20 of grant funding in direct services for pupils.

**8. Program Matching Funding Requirements.**

1. Program must provide local funds totaling no less than one-third of the grant amount.
2. Magnolia Science Academy will provide matching funds for facilities usage not to exceed 25% of total match requirement.
3. YMCA of San Diego County shall contribute 75% or \$21,891.87 of total match requirement unless otherwise agreed upon between Magnolia Science Academy and YMCA.
4. State categorical funds for remedial education activities may not be used to fulfill match requirements.

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

1. Both Magnolia Science Academy 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 Resources & Technical Assistance Center (RTAC), the After School Administrative Program Support Center (ASC), the Children's Initiative (CI), and the San Diego Office of Education (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, sports, visual and performing arts (dance), service learning, and youth development activities. These items should be discussed collaboratively between school administration and YMCA of San Diego County to best meet needs of Magnolia Science Academy.
5. Plan the program through a collaborative process that includes parents, youth, and 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 being provided by Magnolia Science Academy to enrolled participants.
7. Magnolia Science Academy 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. Magnolia Science Academy and YMCA will partner to conduct an annual continuous quality improvement process.
10. Magnolia Science Academy and YMCA will collaborate and coordinate with the regular school day program.
11. Magnolia Science Academy is responsible to ensure the YMCA of San Diego County has access to safe, clean, and supportive indoor/outdoor space at participating school site to conduct a high quality program. Space shall include adequate indoor space for all academic and enrichment activities and shall be cleaned to the same standards/schedule as the regular school day.
12. All YMCA staff and volunteers will fulfill health screening and fingerprint clearance requirements in current law according to Magnolia Science Academy policy.
13. Each ASES funded site will be responsible for the development of a FY2017-18 After School Program Plan as part of the San Diego ASES Program Consortium.
14. Magnolia Science Academy 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.
15. Each site ASES Program plan will identify FY 2017-2018 Attendance Goals described in Section VII of the San Diego Consortium After School Program Plan.
16. Ensure that ASES staff attends district and SDCOE training opportunities designed to maximize program effectiveness.
17. Host scheduled technical assistance site visits conducted by staff from RTAC, the After School (ASC) and the CI.
18. Collaborate with staff from RTAC, the After School (ASC), and the CI to review site visitation and technical assistance reports and plan for continuous program improvement.
19. Magnolia Science Academy and YMCA of San Diego County will ensure the proper record keeping and documentation of program activities and the timely submission of all required reports. All reports due to San Diego County Office of Education and delegated to YMCA of San Diego County by Magnolia Science Academy shall include at least 30 days' notice unless otherwise agreed upon by both parties.

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

1. YMCA of San Diego County will make reports to Magnolia Science Academy as necessary to enable Magnolia Science Academy to perform its duties and will maintain such records and provide access to those records as Magnolia Science Academy deems necessary. The school and YMCA of San Diego County shall maintain such records for at least five years after the completion of the activities for which the funds are used.
2. YMCA of San Diego County 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 in excess of the amount warranted due to the program failing to operate and the program serving fewer pupils than planned, raising an inadequate amount of matching funds, failing to expend funds fully or any other reason during the grant period, the San Diego County Office of Education (SDCOE) shall reduce any subsequent allocations by the amount equal to the overpayment.
6. YMCA of San Diego County shall provide financial expenses monthly to Magnolia Science Academy.
7. Magnolia Science Academy shall be responsible to submit quarterly expenditure reports and program reports (including evaluation reports) to San Diego County Office of Education.

**This award is made contingent upon the availability of funds. If the Legislature takes action to reduce, increase, or defer the funding upon which this award is based, then this award will be amended accordingly.**

#### **PERIOD OF AGREEMENT**

According to the terms of the After School Education & Safety (ASES) Program, the term of this Agreement shall be July 1, 2017 through June 30, 2018.

#### **11. COMPENSATION/COSTS AND PAYMENT SCHEDULE**

Magnolia Science Academy shall reimburse funds to YMCA of San Diego County as available from SDCOE, and within 30 days after invoice for monthly expenses submitted from YMCA of San Diego County. Annual total ASES allocation(s) **shall not exceed \*\$84,029.40** YMCA of San Diego County.

**Payments of the grant may actually differ from the granted amount as determined by CDE due to: 1) Non operation of a program at a school sites or non-operation of a funded grant component. 2) The inability to expend the total grant award by the June 30, 2018 final expenditure deadline for all ASES grant funds as determined by CDE.**

#### **12. YMCA OF SAN DIEGO COUNTY & MAGNOLIA SCIENCE ACADEMY CONTACT**



## PERSONS

### YMCA of San Diego County Contact:

Baron Herdelin-Doherty  
YMCA of San Diego County  
President & CEO  
3708 Ruffin Rd.  
San Diego, CA 92123

### Magnolia Science Academy Contact:

Gokhan Serce  
Magnolia Science Academy  
Principal  
4350 Otay Mesa Rd  
San Diego, CA 92173

## 13. CONFIDENTIALITY

1. This agreement, all communications and information obtained by YMCA of San Diego County from Magnolia Science Academy relating to this agreement, and all information developed by YMCA of San Diego County under this agreement, are confidential. Except as provided in Subsection 3, without the prior written consent of an authorized representative of Magnolia Science Academy, YMCA of San Diego County 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 of San Diego County shall inform the Magnolia Science Academy, in writing, of the nature and reasons for such disclosure. YMCA of San Diego County shall not use any communications or information obtained from Magnolia Science Academy for any purpose other than the performance of this agreement, without Magnolia Science Academy's written prior consent.

Likewise, all communications and information obtained by Magnolia Science Academy from YMCA of San Diego County relating to this agreement are confidential. Except as provided in Subsection 3, without the prior written consent of an authorized representative of YMCA of San Diego County, Magnolia Science Academy 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, Magnolia Science Academy shall inform the YMCA of San Diego County, in writing, of the nature and reasons for such disclosure. Magnolia Science Academy shall not use any communications or information obtained from YMCA of San Diego County for any purpose other than the performance of this agreement, without YMCA of San Diego County's written prior consent.

2. At the conclusion of the performance of this agreement, YMCA of San Diego County shall return to Magnolia Science Academy all written materials constituting or incorporating any communications or information obtained from the Magnolia Science Academy. Upon Magnolia Science Academy's specific approval, YMCA of San Diego County may retain copies of such materials, subject to the requirements of Subsection 1.
3. YMCA of San Diego County may disclose to any vendor, or Magnolia Science Academy approved third parties, any information otherwise subject to Subsection 1 that is reasonably required for the performance of the vendor's work. Prior to any such disclosure, YMCA of San Diego County shall obtain the vendor's written agreement to the requirements of Subsection 1 and shall provide a copy of such agreement to Magnolia Science Academy.

Magnolia Science Academy may disclose to any vendor, or YMCA of San Diego County 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, Magnolia Science Academy shall obtain the YMCA of San Diego County's written agreement to the requirements of Subsection 1 and shall provide a copy of such agreement to Magnolia Science Academy.

4. YMCA of San Diego County represents that it shall not publish or cause to be disseminated through any press release, public statement, or marketing or selling effort any information which relates to this agreement without the prior written approval of the Magnolia Science Academy.

Likewise, Magnolia Science Academy represents that it shall not publish or cause to be disseminated through any press release, public statement, or marketing or selling effort any information which relates to this agreement without the prior written approval of the YMCA of San Diego County.

5. YMCA of San Diego County obligation of confidence with respect to information submitted or disclosed to YMCA of San Diego County by Magnolia Science Academy hereunder shall survive termination and comply with all requirements outlined in this Agreement which is attached hereto and made a part hereof.

Likewise, Magnolia Science Academy obligation of confidence with respect to information submitted or disclosed to Magnolia Science Academy by YMCA of San Diego County 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**

Identities of all respondents including but not limited to staff, principal(s), parent(s), student(s) and individual responses on surveys in conjunction with this evaluation will be kept confidential by the YMCA of San Diego County. Reports generated will reflect aggregated data. No individual responses will be used. The YMCA of San Diego County is not authorized to redistribute or share any data or information with any agency, entity or individual without the written consent of Magnolia Science Academy.

YMCA of San Diego County agrees to all of the following:

(a) YMCA shall not disclose Private Information obtained from Magnolia Science Academy in the performance of this Agreement to any other vendor, person, or other entity, unless one of the following is true:

(i) The disclosure is authorized by this Agreement;

(ii) The YMCA received advance written approval from the Magnolia Science Academy to disclose the information; or

(iii) The disclosure is required by law or judicial order.

(b) Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement. Any disclosure or use of Private

Information authorized by a Contracting Department shall be in accordance with any conditions or restrictions stated in the approval.

(c) Any failure of contractor to comply with the Nondisclosure of Private Information Ordinance 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, Magnolia Science Academy may terminate this Agreement, debar Contractor, or bring a false claim action against Contractor.

## **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.
2. If the termination is for the convenience of the Magnolia Science Academy, upon receipt of 60 days' notice, YMCA of San Diego County shall:
  - (1) Immediately discontinue all services affected (unless the notice directs otherwise) and
  - (2) Deliver to Magnolia Science Academy 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 San Diego County of such notice.

YMCA of San Diego County shall submit a final invoice within 60 days of termination and upon approval the Magnolia Science Academy shall reimburse for services actually performed prior to the effective date of termination and other costs reasonably incurred by YMCA of San Diego County to implement the termination.

## **16. TERMINATION FOR DEFAULT**

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 because of the failure of to fulfill its contractual obligations.
2. If this agreement is terminated by Magnolia Science Academy, upon receipt of such notice, YMCA of San Diego County shall:
  - (1) Immediately discontinue all services affected (unless the notice directs otherwise) and
  - (2) Deliver to Magnolia Science Academy 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 San Diego County of such notice.
3. If the termination is due to the failure of YMCA of San Diego County to fulfill its contractual obligations, Magnolia Science Academy may take over the services, and complete the services by contract or otherwise.

## **17. INDEPENDENT CONTRACTOR**

It is expressly understood that at all times, while rendering the services described herein, and in complying with any terms and conditions of this Agreement, YMCA of San Diego County is acting as an independent contractor and not as an officer, agent, or employee of Magnolia Science

Academy.

## **18. HOLD HARMLESS**

YMCA of San Diego County agrees to hold harmless, defend, and to indemnify Magnolia Science Academy, its officers, agents, and employees against any and all losses, injuries, claims, actions, judgments, and liens arising from, or alleged to have arisen from, Magnolia Science Academy performance, or lack thereof, under this Agreement.

Likewise, Magnolia Science Academy agrees to hold harmless, defend, and to indemnify YMCA of San Diego County, its officers, agents, and employees against any and all losses, injuries, claims, actions, judgments, and liens arising from, or alleged to have arisen from, YMCA of San Diego County performance, or lack thereof, under this Agreement.

## **19. WORKERS' COMPENSATION**

YMCA of San Diego County shall provide workers' compensation insurance or shall self-insure their services in compliance with provisions of Section 3700 of the Labor Code of the State of California. A Certificate of Insurance may be provided, providing for such, or YMCA of San Diego County shall sign and file with Magnolia Science Academy the following certificate:

"I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provision of that Code, and I will comply with such provision before commencing the performance of the work of this Agreement."

## **20. NON-FUNDING**

Notwithstanding any of the foregoing provisions, if for any fiscal year of this Agreement the San Diego County Office of Education School Board fails to appropriate or allocate funds for future periodical payments under this Agreement, Magnolia Science Academy 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 of San Diego County agrees to maintain and preserve until five years after termination of the Agreement with Magnolia Science Academy, 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**

YMCA of San Diego County must ensure that it shall maintain Public Liability and Property Damage Insurance to protect them and the Magnolia Science Academy from all claims for personal injury, including accidental death, as well as from all claims for property damage arising from the operations under this Agreement. The minimum amounts of such insurance shall be as herein after

set forth.

Amounts of Insurance:

General Liability Comprehensive form - Products/Completed Operations	Bodily Injury and Property Damage	\$ <u>1,000,000</u> Amount
---	--------------------------------------	-------------------------------

YMCA of San Diego County shall file, with Magnolia Science Academy, Certificates of Insurance indicating a thirty-day (30) cancellation notice and naming the **Magnolia Science Academy** 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 of San Diego County 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. FINAL APPROVAL**

This Agreement is of no force or effect until approved by signature by the Magnolia Science Academy Principal and the YMCA of San Diego County President/CEO.

**26. TOBACCO-FREE FACILITY**

Magnolia Science Academy is a tobacco-free facility. Tobacco use (smoked or smokeless) is prohibited at all times on all areas of school property.

**27. PUPIL SAFETY / SCHOOL SAFETY ACT**

Pupil Safety/School Safety Act: The Magnolia Science Academy shall determine the YMCA of San Diego County's level of contact with pupils from the following two (2) choices, by inserting an **X** below:

\_\_\_ The YMCA of San Diego County 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 of San Diego County will have “**greater than limited contact**” with pupils and the YMCA of San Diego County shall require their employees, including the employees of any subcontractor, who will provide these services, to submit their fingerprints in order to conduct a criminal background check per Education Code §45122.1. The YMCA of San Diego County 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 of San Diego County has **certified in writing** to the Magnolia Science Academy that the employer and all of these employees have not been convicted of, or do not have charges pending for a defined felony.

By (Authorized Signature): \_\_\_\_\_ Date \_\_\_\_\_

Name (Type or Print): \_\_\_\_\_

YMCA of San Diego County

**28. ENTIRE AGREEMENT**

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

Baron Herdelin-Doherty  
President/CEO  
YMCA of San Diego County

Date:

Date:

**YMCA Federal EIN #: 95-2039198**