

## **MEMORANDUM OF AGREEMENT**

Expanded Learning Opportunities Program (ELO-P) 2022-2023  
YMCA of San Diego County and San Pasqual Union School District

This Agreement is to provide before and after school program services for San Pasqual Union School District and is entered into this 1<sup>st</sup> day of July, 2022 by and between the San Pasqual Union School District (herein known as “San Pasqual”) and the YMCA of San Diego County (herein known as “YMCA,” together with San Pasqual, “Parties”) who agrees to provide before and after school program services in accordance with the provisions of the Expanded Learning Opportunities Program (herein known as “ELO-P”).

### **1. General Scope of Services:**

San Pasqual and YMCA will collaborate to design a before and after school program for students at San Pasqual Union School District. The program will offer before and after school program services for up to 60 TK/K-6<sup>th</sup> grade district students through the ELO-P. The program is designed to develop the academic, social, emotional, and physical needs and interests of participating students through hands-on, engaging learning and enrichment experiences

### **2. Program Days and Hours of Operation**

The program will operate before and after school services from August 16, 2022- June 8, 2023, excluding district scheduled holidays. The YMCA will operate a five day per week program for K – 6<sup>th</sup> grades for A.M. and P.M. program services. The A.M. program will operate Monday - Friday from 6:30 A.M.-8:00 A.M. The P.M. program will operate Monday-Wednesday, and Friday from 3 P.M.- 6 P.M. and Thursday from 1:30 P.M.-6 P.M. The YMCA will operate a five day per week program for Transitional Kindergarten (herein known as “TK”) for PM services only. The full-day TK program will operate Monday-Friday from 1:30 P.M.-6 P.M. and the half- day TK program will operate Monday-Friday from 1:30 P.M. -3 P.M.

### **3. Enrollment & Daily Attendance Accountability Requirements:**

1. The YMCA will facilitate and manage student interest and enrollment systems for the ELO-P.
2. The YMCA will implement daily written attendance procedures for all students who participate in the ELO-P
4. YMCA must ensure all students are signed-in and signed-out of the program.
5. YMCA will retain written attendance records for a minimum of 5 years and make records

available upon request by San Pasqual.

#### **4. Staffing Requirements:**

1. YMCA must ensure a maximum of 20:1 student-to-staff ratio for students in 1<sup>st</sup>-6<sup>th</sup> grade and a 10:1 ratio for students in TK/K in accordance with EC Section 46120[b][2][D].
2. YMCA must establish qualifications for each staff position that, at a minimum, ensure that all staff members who directly supervise pupils meet the minimum qualifications for an instructional aide, pursuant to the policies of San Pasqual and requirements of EC sections 8483.4 and 46120(b)(2)(D).
3. YMCA shall be responsible for students, staff, and parents accessing services under this Agreement. YMCA certifies that it shall provide adequate supervision of the students, staff, and other program personnel, and that its staff will follow legal guidelines on reporting child abuse/neglect.
4. YMCA must certify that all personnel providing services to students are screened through Livescan and complies with all fingerprinting and background check requirements, including those described in Education Code section 45125.1 and as noted in section 22 below. YMCA must also certify that such personnel has provided evidence of freedom from active tuberculosis prior to starting service at any school site.

#### **5. Program Data and Evaluation Requirements:**

1. YMCA will collaborate with San Pasqual to develop and update an ELO-P plan in accordance with EC Section 8482.3(g)(1).
2. YMCA will respond to surveys or other methods of data collection that may be required throughout the duration of the program.
3. San Pasqual will share program evaluation data reports with YMCA to use for continuous quality improvement plan to the extent it is authorized to share that information pursuant to law.

#### **6. Program Audits.**

1. YMCA shall cooperate with San Pasqual as necessary in required program audits conducted pursuant to EC Section 41020.

#### **7. Additional Program Operation Requirements.**

1. Both San Pasqual and YMCA shall each designate a lead contact person for the program.
2. The program will include an educational and literacy element designed to provide one or more of the following core content subject areas: language arts, mathematics, history and social science, science, and computer training in accordance with EC Section 8482.3(c)(1)(A) and (B).
3. The program will have an educational enrichment element that may include, but not limited to STEM, sports, visual and performing arts, and youth development activities provided by the YMCA and/or subcontracted specialty enrichment providers. These items will be discussed collaboratively between San Pasqual and YMCA in accordance with EC Section 8482.3(c)(1)(A) and (B).
4. San Pasqual is responsible for ensuring the YMCA has access to safe, clean, and supportive indoor/outdoor facilities and amenities to conduct a high-quality program.
5. San Pasqual will provide YMCA training on district and campus emergency protocols during before and after school program hours.
6. San Pasqual and YMCA will ensure the proper record keeping and documentation of program activities and the timely submission of all required reports. All reports due to San Pasqual from YMCA shall include written authorization and detailed instructions unless otherwise agreed upon by both parties.
7. San Pasqual and YMCA will work collaboratively to ensure that the ELO-P is following updated COVID-19 Public Health Guidance for K-12 Schools in California.
8. YMCA will provide proper record keeping and documentation of program activities and the timely submission of all required reports and documents.
9. San Pasqual will collaborate with YMCA to market and promote student enrollment and registration for the ELO-P and before and after school program services.
10. San Pasqual will collaborate with YMCA to provide unified communication to district personnel regarding the ELO-P goals and partnership to deliver services to students and families.
11. San Pasqual and YMCA shall communicate regularly and as needed to create a shared program vision, share program feedback, and engage in continuous quality improvement process for the ELO-P.

## **8. Compensation/Costs and Payments**

1. YMCA shall provide monthly invoices and income statements for all ELO-P expenses.
2. San Pasqual shall reimburse YMCA for ELO-P expenses within 30 days of monthly invoice.
3. YMCA shall provide any additional expense documentation and financial reports to San Pasqual

as needed based on written request.

4. YMCA shall retain record of ELO-P expenses for a minimum of 5 years.
5. The YMCA will charge family fees to students who wish to participate in before and after school services but are not eligible for prioritization through ELO-P. The YMCA shall waive the cost of these fees for pupils who are eligible for free or reduced-price meals, for a child that is a homeless youth, as defined by the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Section 11434a), or for a child who the program knows is in foster care. The YMCA shall schedule fees on a sliding scale that considers family income and ability to pay.

The total reimbursement to YMCA for ELO-P program services **shall not exceed \$171,956.00.**

## **9. Period of Agreement**

The term of this Agreement shall be July 1, 2022, through June 30, 2023, unless mutually extended by both parties.

## **10. YMCA & San Pasqual ELO-P Agreement Contact Persons**

### YMCA of San Diego County Contact:

Steve Hensel  
Executive Director  
Expanded Learning Programs  
YMCA of San Diego County  
4451 30th Street  
San Diego, CA 92116  
P: 619-347-3917  
E: shensel@ymcasd.org

### San Pasqual Union School District Contact:

Rhonda Brown  
Chief Business Officer  
San Pasqual Union School District  
15305 Rockwood Road  
Escondido, CA 92027  
P: 760-745-4931 ext.: 1101  
E: rhonda.brown@sanpasqualunion.net

## **11. Confidentiality**

1. All communications and information obtained by YMCA from San Pasqual relating to this agreement, and all information developed by YMCA under this agreement, are confidential. Except as provided in Subsection 3, without the prior written consent of an authorized representative of

San Pasqual, YMCA shall neither divulge to, nor discuss with, any third party either the work and services provided hereunder, or any communication or information in connection with such services or work, except as required by law. Prior to any disclosure of such matters, whether as required by law or otherwise, YMCA shall inform San Pasqual in writing, of the nature and reasons for such disclosure. YMCA shall not use any communications or information obtained from San Pasqual for any purpose other than the performance of this agreement, without San Pasqual's written prior consent. YMCA, on behalf of itself and its employees, agents, and subcontractors, agrees to comply with the Family Educational Rights and Privacy Act (FERPA) and California Education Code section 49060 *et seq.* San Pasqual is subject to the Public Records Act and FERPA, both of which may require San Pasqual to disclose information to the public and/or parents. YMCA will need notification within 3 business days if information is disclosed.

2. At the conclusion of the performance of this agreement, YMCA shall return to San Pasqual all written materials constituting or incorporating any communications or information obtained from San Pasqual. Upon San Pasqual's specific approval, YMCA may retain copies of such materials, subject to the requirements of Subsection 1.
3. YMCA obligation of confidence with respect to information submitted or disclosed to YMCA by San Pasqual hereunder shall survive termination and comply with all requirements outlined in this Agreement which is attached hereto and made a part hereof.

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

## **12. Confidentiality of Services**

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

YMCA agrees to all the following:

(a) YMCA shall not disclose Private Information obtained from San Pasqual 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 San Pasqual to disclose the information; or

(iii) The disclosure is required by law, a lawfully issued subpoena or judicial order.

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

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

### **13. 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 San Pasqual, upon receipt of 60 days' notice, YMCA shall:

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

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

- (c) YMCA shall submit a final invoice within 60 days of termination and upon approval San Pasqual shall reimburse for services performed prior to the effective date of termination and other costs incurred by YMCA to implement the termination. YMCA shall endeavor to avoid any unnecessary or avoidable expenses to San Pasqual.

#### **14. 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 fulfill its contractual obligations so long as that party provides at least seven days' advance written notice and an opportunity to cure any breach of this agreement.
2. If San Pasqual terminates this agreement, upon receipt of such notice, YMCA shall:
  - (1) Immediately discontinue all services affected (unless the notice directs otherwise) and
  - (2) Deliver to San Pasqual all information and material as may have been involved in the provision of services in the performance of this agreement, whether completed or in process. Termination of this agreement shall be as of the date of receipt by YMCA of such notice.
  - (3) Endeavor to avoid any unnecessary or avoidable expenses to San Pasqual.
3. If the termination is due to the failure of YMCA to fulfill its contractual obligations, San Pasqual may take over the services, and complete the services by contract or otherwise.

#### **15. 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 is acting as an independent contractor and not as an officer, agent, or employee of San Pasqual.

#### **16. Hold Harmless**

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

San Pasqual agrees to indemnify, defend and hold harmless the YMCA, its board of trustees, directions, officers, agents, and employees against any and all claims, cost, demands, expenses (including attorney's fees), losses, damages, injuries, and liabilities arising from any accident, death, or injury whatsoever or however caused to any person or property, because of, arising out of, or related to the gross negligence, or willful misconduct of the San Pasqual and its employees, agents, and representatives. It is understood that such indemnity shall survive the termination of this agreement. This section 16 shall survive termination of this agreement.

#### **17. Worker's Compensation**

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

#### **18. Audit**

YMCA agrees to maintain and preserve until five years after termination of the Agreement with San Pasqual, and to permit San Pasqual, 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 and ELO-P funded services.

#### **19. Insurance Requirements**

During the entire term of this Agreement and any extension or modification thereof, YMCA shall keep in effect, at its sole expense, a policy (or policies) of general liability insurance, including contractual liability coverage, professional liability, and auto liability coverage of owned and non-owned vehicles used by YMCA in relation to the performance of services under this Agreement with minimum limits of two million dollars (\$2,000,000) per occurrence which shall include coverage for sexual



abuse/molestation, and two million dollars (\$2,000,000) in aggregate. Such auto liability coverage shall include limits of not less than (\$1,000,000) combined single limit per accident. All above-noted insurance shall name San Pasqual as an additional insured, and an endorsement evidencing such coverage shall be provided within thirty (30) days, only as to matters arising out of this Agreement for which YMCA is required to indemnify the San Pasqual under section 19 of this Agreement.

YMCA of San Diego County shall file, with San Pasqual, Certificates of Insurance indicating a thirty-day (30) cancellation notice and naming **San Pasqual Union School District** as an additional insured.

## **20. 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.

## **21. Compliance with Law**

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

## **22. Final Approval**

This Agreement is of no force or effect until approved by the San Pasqual Union School District Board of Education and authorized signatures by San Pasqual Union School District and the YMCA of San Diego County.

## **23. Pupil Safety/School Safety Act**

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

\_\_\_The YMCA will have "**limited contact**" with pupils and the Contractor/Provider may be required

to do one or more of the following to protect pupils:

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

X The YMCA will have “**greater than limited contact**” with pupils and the YMCA shall require their employees, including the employees of any subcontractor, who will provide these services, to submit their fingerprints to conduct a criminal background check per Education Code §45125.1. The YMCA shall not permit any employee, including the employees of any subcontractor, to perform services under this contract until:

1. The Department of Justice has determined that these employees have not been convicted of a felony as described in Education Code section 45122.1 or have charges pending for a defined felony.
2. The YMCA has **certified in writing** to San Pasqual that the employer and all these employees have not been convicted of, or do not have charges pending for a defined felony.

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

\_\_\_\_\_  
Date

Lauren Hall  
Regional Executive Director  
Magdalena Ecke Family YMCA  
YMCA of San Diego County

#### 24. 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.

## **25. Compliance with Laws**

During the term of the Agreement, YMCA and the San Pasqual shall comply with all applicable federal and state laws and regulations, including those not expressly referenced in this Agreement.

## **26. Nondiscrimination**

YMCA shall not discriminate based on disability, gender, gender identity, gender expression, nationality, immigration status, race or ethnicity, religion, sexual orientation, any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code, or any other classification protected by federal or state laws in employment or operation of its programs.

## **27. Corporal Punishment Prohibitions**

YMCA shall not utilize any intervention that is designed to, or likely to, cause physical pain; release noxious, toxic, or otherwise unpleasant sprays, mists, or substances in proximity to an individual's face; utilize any intervention which is designed to subject, used to subject, or likely to subject the individual to verbal abuse, ridicule or humiliation, or which can be expected to cause excessive emotional trauma; utilize restrictive interventions which employ a device or material or objects that simultaneously immobilize all four extremities (except as permitted by law); locked seclusion (except as permitted by law); utilize any intervention that precludes adequate supervision of the individual; or, utilize any intervention which deprives the individual of one or more of his or her senses.

## **28. Conflicts of Interest**

YMCA has familiarized itself with state law related to conflicts of interest and fully agrees to comply with such laws. YMCA has familiarized itself with San Pasqual's Conflict of Interest Code and agrees that no direct or indirect financial interest currently exists or will exist during the term of this Agreement that would or will conflict in any way with YMCA's performance of this Agreement. In addition to the foregoing, YMCA agrees to avoid the appearance of any conflict of interest.

## **29. Cooperation in Disposition of Claims**

The Parties agree to cooperate with each other in the timely investigation and disposition of audits, disciplinary actions, and third-party liability claims arising out of any services provided under this Agreement or in the operation of the Program. The parties shall notify one another as soon as possible of any adverse event which may result in liability to the other party. It is the intention of the parties to fully cooperate in the disposition of all such audits, actions, or claims. Such cooperation may include, but is not limited to, sharing records, timely notice, joint investigation, defense,

disposition of claims of third parties arising from services performed under this Agreement, and making witnesses available.

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

**SAN PASQUAL UNION  
SCHOOL DISTRICT**

**YMCA OF SAN DIEGO COUNTY**

By (Authorized Signature)

By (Authorized Signature)

\_\_\_\_\_  
Mark Burroughs  
Superintendent/Principal  
San Pasqual Union School District

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

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

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

Board Approval:

YMCA Federal EIN #: 95-2039198