

AGENDA ITEM NO. 1K

COUNCIL MEETING 10/1/09

APPROVED BY

FOR  
DEPARTMENT DIRECTOR

CITY MANAGER

October 1, 2009

**FROM:** RANDALL L. COOPER, Director  
Parks, After School, Recreation and Community Services Department

**BY:** SHAUN SCHAEFER, Community Services Manager  
PAUL A. MELIKIAN, Administrative Manager  
Parks, After School, Recreation and Community Services Department

**SUBJECT:** APPROVAL OF A CONTRACT FOR \$28,000 WITH FRESNO COUNTY OFFICE OF EDUCATION FOR THE PARKS, AFTER SCHOOL, RECREATION AND COMMUNITY SERVICES DEPARTMENT TO CONDUCT THE FRESNO BEST PROGRAM AT COOPER MIDDLE SCHOOL RUNNING THROUGH JUNE 30, 2010

#### RECOMMENDATIONS

Staff recommends that the City Council approve the attached academic-year agreement with the Fresno County Office of Education (FCOE) and authorize the Director of Parks, After School, Recreation and Community Services (PARCS) to execute the agreement on behalf of the City. Approval of this contract and the corresponding appropriations will allow PARCS to receive up to \$28,000 in FY 2010 to cover personnel and operating costs associated with providing a collaborative After School Fresno BEST program at Cooper Middle School.

Additional appropriations are not needed as this contract was anticipated in the FY 2010 Adopted Budget.

#### EXECUTIVE SUMMARY

The attached contractor service agreement was created by FCOE for consideration and approval by both the Council and the FCOE. The contractual agreement would establish a nine-month commitment at \$28,000 for a full reimbursement of services from FCOE. The contract will allow PARCS staff to begin implementation of the Fresno BEST Program at Cooper Middle School. The contract will begin in October of 2009 and will fund the Fresno BEST program for the duration of the 2009-2010 school year. Funding for the Fresno BEST program will supply the school site with operating costs and one 15-hour per week staff member to deliver programming. The staff costs and related overhead will be fully recovered under the agreement; so no General Fund dollars are requested to implement the program.

An added benefit of this unified effort of Fresno BEST program providers (FCOE and PARCS), is that it will build the strength and leverage needed to acquire additional grant funds aimed at gang prevention that will serve youth from 9<sup>th</sup> through 12<sup>th</sup> grades. The Fresno BEST program will provide youth with a variety of activities and resources during the critical 3:00 p.m. – 6:00 p.m. after-school hours.

#### BACKGROUND

In FY 2006, Parks, After School, Recreation and Community Services (PARCS), in conjunction with Fresno Unified School District (FUSD) began to operate the first collaborative After School High School Program,

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Fresno BEST, at Roosevelt High School. This 'pilot' program was conducted at one high school site in 2005. Due to the success of the 'pilot' Fresno BEST site, PARCS expanded the Fresno BEST program to four high school sites in FY 2007, to include Sunnyside, J.E. Young, Roosevelt and Fresno High Schools. In FY 2008, PARCS re-deployed the Literacy program resources to expand the Fresno BEST high school program to all sites, and create the Jr. BEST middle school program. Programming efforts include hiring, training, instruction, materials, supervision, and program coordination.

**FISCAL IMPACT**

Acceptance of the grant funds will have no impact to the General Fund as \$28,000 of revenue will be received from FCOE as reimbursement for up to \$28,000 of program expenses, which includes a 10% administrative fee. Additional appropriations are not needed as this contract was anticipated in the FY 2010 Adopted Budget.

K:\JosieK\Rept to CC\2009 9/21/09

Attachment: Contract with FCOE

**AGREEMENT**  
**between the**  
**FRESNO COUNTY SUPERINTENDENT OF SCHOOLS**  
**and the**  
**CITY OF FRESNO**

**21st Century Community Learning Centers**  
**2009-2010**

GENERAL INFORMATION

**FCSS:**

FCSS Department: After School Programs  
Program: ASES/ 21<sup>st</sup> CCLC  
FCSS Contact Person: Alix Frazer, Director

**Contractor:**

Contractor: City of Fresno  
Contractor Department/Address: Fresno City Parks and Recreation  
1515 Divisadero St.  
Fresno, CA 93721  
Contractor's Contact Person: Randall Cooper  
Contractor's Taxpayer Identification Number or SSN: 94-6000338

**Program Provider:**

Fresno County Superintendent of Schools  
[aka Fresno County Office of Education]  
District: Fresno Unified School District

**School Site/Address:**

Cooper Middle School  
2277 W. Bellaire Way  
Fresno, CA 93705

This Agreement is made and entered into this day of August by and between the Fresno County Superintendent of Schools, aka the Fresno County Office of Education (hereinafter referred to as "FCSS"), and the City of Fresno (hereinafter referred to as "CONTRACTOR").

1. CONTRACTOR Services. CONTRACTOR, through its Parks, After School, Recreation and Community Services Department, agrees to provide: Two (2) Leader(s) (hereinafter "Leader") to instruct and coordinate Fresno Business Education and Service Training (hereinafter "BEST") instruction for students enrolled in the After School Program located at Fresno Unified School District's Cooper Middle School.

Leader shall be responsible for providing such services for each school day of the After School Program is operated at the site from approximately 2:30 p.m. to 5:30 p.m. A school day of service shall consist of three (3) hours. Twenty (20) additional non-school days shall be allotted for activities related, but not limited to, service learning opportunities, job shadowing/ internship and college visitations. The program shall

consist of a maximum of Two Hundred (200) days. The After School Program operates according to the school site's calendar, which begins on August 17, 2009 and concludes June 10, 2010.

2. CONTRACTOR Qualifications. CONTRACTOR represents that it has in effect all licenses, permissions, and legal qualifications to perform this Agreement, including:
  - a. Fingerprinting. CONTRACTOR expressly acknowledges and certifies that:
    - i. CONTRACTOR and all of its employees, agents, and consultants (hereinafter collectively "employees") working on a school site do not have a record of conviction for any serious felony and understand that they must submit or have submitted fingerprints in a manner authorized by the Department of Justice, together with the requisite fee as set forth in Education Code Section 45125.1, and that proof of such Department of Justice clearance is to be provided to the FCSS prior to CONTRACTOR or its employees working at site;
    - ii. CONTRACTOR shall not permit any employee to come in contact with students until the Department of Justice has ascertained that the employee has not been convicted of a serious or violent felony;
    - iii. CONTRACTOR shall certify in writing to the FCSS that none of its employees who may come in contact with students have been convicted of a serious or violent felony; and
    - iv. CONTRACTOR shall provide to FCSS a list of names of its employees who may come in contact with students.
  - b. TB Clearance. CONTRACTOR expressly acknowledges and certifies that pursuant to Education Code section 49406 all employees that shall come into contact with students has submitted to an examination within the last 60 days to determine that he/she is free of active tuberculosis, or has on file, such determination that is still current and not expired.
3. Term. This Agreement shall begin on July 1, 2009, and shall terminate on June 10, 2010. There shall be no extension of the term of the agreement without a written agreement signed by both parties.
4. Compensation. FUSD shall pay CONTRACTOR a maximum of Twenty Eight Thousand Dollars and No/100s (\$28,000) for all services and materials provided under the terms of this Agreement. Such compensation includes the following [(max compensation amount listed in paragraph 4a) + (amount listed in paragraph 4b) + (amount listed in paragraph 4c)]. FUSD agrees to pay Contractor within thirty (30) days of receipt of invoice.
  - a. Maximum payment to CONTRACTOR for Leader services shall not exceed Twenty-Four Thousand Dollars and 0/100s (\$24,000).

- b. Payment to the CONTRACTOR of One Thousand Six Hundred Dollars and 0/100s (\$1,460) for the cost of materials, supplies, and deliverables related to CONTRACTOR's performance of services under the terms of this Agreement.
  - c. Payment to the CONTRACTOR of 10% of the sum of paragraphs 4a and 4b in the amount of Two Thousand Four Hundred Dollars and 0/100s (\$2,540) related to CONTRACTOR's performance of services under the terms of this Agreement.
5. Conflict of Interest. CONTRACTOR does not have, or anticipates having, any interest in real property, investments, business interests in or income from sources which would provide CONTRACTOR, his/her spouse or minor child(ren) with personal financial gain as a result of any recommendation, advice, or any other action taken by CONTRACTOR during the rendition of services under this Agreement.
6. Termination of Agreement. Either FCSS or CONTRACTOR may terminate this Agreement at any time for any reason upon thirty (30) days written notice. In the event of early termination, CONTRACTOR shall be paid for satisfactory work performed to the date of termination. FCSS may then proceed with the work in any manner the FCSS deems proper.
7. Indemnity. The CONTRACTOR shall indemnify, hold harmless, and defend FCSS and each of its officers, officials, employees, and agents from any and all loss, liability, fines, penalties, forfeitures, costs, and damages (whether in contract, tort, or strict liability, including, but not limited to, personal injury, death at any time, and property damage) incurred by FCSS, CONTRACTOR, or any other person, and from any and all claims, demands, and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to arise directly or indirectly from the negligent or intentional acts or omissions of CONTRACTOR or any of its officers, officials, employees, or in the performance of this Agreement.

FCSS shall indemnify, hold harmless and defend CONTRACTOR and each of its officers, officials, employees, or agents from any and all loss, liability, fines, penalties, forfeitures, costs, and damages (whether in contract, tort, or strict liability, including, but not limited to, personal injury, death at any time, and property damage) incurred by the CONTRACTOR, FCSS, or any other person, and from any and all claims, demands, and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to arise directly or indirectly from the negligent or intentional acts or omissions of FCSS or any of its officers, officials, employees, or agents in the performance of this Agreement.

In the event of concurrent negligence on the part of CONTRACTOR or any of its officers, officials, employees, or agents, and FCSS or any of its officers, officials, employees, or agents, the liability for any and all such claims, demands, and actions in law or equity for such losses, fines, penalties, forfeitures, costs, and damages shall be apportioned under the State of California's theory of comparative negligence as presently

established or as may be modified hereafter.

This section shall survive termination or expiration of this Agreement.

8. Insurance. It is understood and agreed that CONTRACTOR and FCSS maintain insurance policies or self-insurance programs to fund their respective liabilities. Evidence of Insurance, Certificates of Insurance or other similar documentation shall not be required of either party under this Agreement.
9. Independent CONTRACTOR Status. While engaged in carrying out the terms and conditions of this Agreement, the CONTRACTOR is an independent contractor, and not an officer, employee, agent, partner, or joint venture of the FCSS.
10. Worker's Compensation Insurance. CONTRACTOR agrees to provide all necessary Workers' Compensation insurance for CONTRACTOR's employees, if any, at CONTRACTOR's own cost and expense.
11. Taxes. CONTRACTOR agrees that CONTRACTOR has no entitlement to any future work from the FCSS or to any employment or fringe benefits from the FCSS. Payments to the CONTRACTOR pursuant to this Agreement will be reported to Federal and State taxing authorities as required. FCSS will not withhold any money from compensation payable to CONTRACTOR. In particular, FCSS will not withhold FICA (social security) state or federal unemployment insurance contributions, state or federal income tax or disability insurance. CONTRACTOR is independently responsible for the payment of all applicable taxes.
12. Assignment. The CONTRACTOR shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties, or obligations without the prior written consent of FCSS.
13. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the CONTRACTOR and the FCSS and their respective successors and assigns.
14. Severability. If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
15. Amendments. The terms of the agreement shall not be waived, altered, modified, supplemented, or amended in any manner whatsoever except by written agreement signed by both parties.
16. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California and venue shall be in the appropriate Superior Court in Fresno, California.
17. Written Notice. Written notice shall be deemed to have been duly served if sent by certified return receipt mail to:

**FCSS:**

Fresno County Office of Education,  
After School Program  
Attention: Alix Frazer, Director  
1111 Van Ness Avenue  
Fresno, California 93721

**CONTRACTOR:**

Fresno City Parks and Recreation  
Department  
Attention: Randall Cooper, Director  
2326 Fresno Street, Room 101  
Fresno, California 93721

cc: Cooper Middle School  
Attention: Scott Lamm  
2277 W. Bellaire Way  
Fresno, CA 93705

18. Non-Discrimination. During the performance of this Agreement, CONTRACTOR and its subcontractors (if applicable) shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical disability (including HIV and AIDS), medical condition (cancer related), marital status, age (over 40), gender, sexual preference, or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. CONTRACTOR and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. CONTRACTOR and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 *et seq.*) and the applicable regulations promulgated hereunder (California Administrative Code, Title 2, Section 7285.0 *et seq.*). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
19. Compliance with Law. CONTRACTOR agrees that it shall comply with all legal requirements for the performance of its duties under this agreement and that failure to do shall constitute material breach.
20. Entire Agreement. This Agreement is intended by the Parties as the final expression of their agreement with respect to such terms as are included herein and as the complete and exclusive statement of its terms and may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement, nor explained or supplemented by evidence of consistent additional terms.
21. Execution of Other Documents. The parties to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

22. Council Approval. The effectiveness of this Agreement is contingent upon the approval of the Fresno City Council.

Executed at Fresno, California, on the date and year first written above.

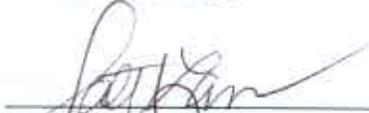
**FCSS**

Fresno County Superintendent of Schools



Alix Frazer  
Director, FCOE After School Programs

REVIEWED BY:



Scott Lamm, Principal  
Cooper Middle School  
Fresno unified School District

**CONTRACTOR**

City of Fresno  
Parks, After School Recreation and  
Community Services Department

\_\_\_\_\_  
Randall Cooper  
Director, Fresno PARCS

ATTEST:  
REBECCA KLISCH  
Clerk, City of Fresno

\_\_\_\_\_  
Deputy

APPROVED TO AS FORM:  
Fresno City Attorney



\_\_\_\_\_  
Deputy BRADLEY

Date: 9/9/09

APPROVED BY  
Fresno City Counsel

Date of Approval: \_\_\_\_\_

Attest: \_\_\_\_\_

**SCOPE OF SERVICES**  
**Agreement between City of Fresno**  
**and Fresno County Office of Education Site**  
**at Cooper Middle School**

**FRESNO JR. BEST**

Program Title

**Purpose**

It is expressly understood that After School Programs represent a partnership between parents, students, and schools and whose goal is to improve outcomes for children in middle schools, high schools, their families, and surrounding neighborhoods.

**Description of Services**

The City of Fresno Jr. Business, Education, and Service Training (BEST) program provides one staff member to facilitate the Jr. BEST and/ or Academic Game Plan (AGP) program curriculum at Cooper Middle School.

Staff will provide instruction for 20 students per one (1) instructor. Jr. BEST will provide 2 instructor(s) at Cooper Middle School for the 2009/10 academic year.

Jr. BEST hours of operation will commence at 2:45p.m. and conclude at 5:45p.m. on regularly scheduled school days. A typical week of Jr. BEST operation will consist of 15 hours.

On occasion the Jr. BEST/ AGP programs may operate on weekends and weeknights. School officials will be notified when these occurrences take place.

**Value**

The monetary value for Jr. BEST including staffing, program supplies and training is \$28,000 for the 2009/10 academic year.

**Funding Sources**

Fresno County Office of Education After School Education and Safety Grant