

AGENDA ITEM NO.
<u>COUNCIL MEETING</u> 11/04/08
APPROVED BY
DEPARTMENT DIRECTOR <i>FOR Jerry Hayes</i>
CITY MANAGER <i>[Signature]</i>

November 4, 2008

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

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

**SUBJECT:** 1) APPROVAL OF CONTRACTS WITH FRESNO COUNTY OFFICE OF EDUCATION TO PROVIDE UP TO \$127,537 FOR THE PARKS, AFTER SCHOOL, RECREATION AND COMMUNITY SERVICES DEPARTMENT TO CONDUCT COLLABORATIVE AFTER SCHOOL MIDDLE SCHOOL PROGRAMS (FRESNO JR. BEST) AT FIVE FRESNO UNIFIED SCHOOL DISTRICT MIDDLE SCHOOL SITES RUNNING THROUGH JUNE 30, 2009.

2) A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO ADOPTING THE 42<sup>nd</sup> AMENDMENT TO THE ANNUAL APPROPRIATION RESOLUTION NO. 2008-162 TO APPROPRIATE \$25,900 IN THE PARKS, AFTER SCHOOL, RECREATION AND COMMUNITY SERVICES DEPARTMENT TO CONDUCT COLLABORATIVE AFTER SCHOOL MIDDLE SCHOOL PROGRAMS (FRESNO JR. BEST) AT FIVE FRESNO UNIFIED SCHOOL DISTRICT MIDDLE SCHOOL SITES RUNNING THROUGH JUNE 30, 2009

**KEY RESULT AREA** Education

## RECOMMENDATIONS

Staff recommends that the City Council approve the attached one-year agreements 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 \$127,537 in FY 2009 to cover personnel and operating costs associated with providing a collaborative After School Fresno Jr. BEST program at Cooper, Tioga, Tehipite, Fort Miller and Terronez FCOE middle school sites.

## EXECUTIVE SUMMARY

The attached contractor service agreements were created by FCOE for consideration and approval by both the Council and FCOE. The contractual agreement would establish a six month commitment at \$127,537 for a full reimbursement of services from FCOE. The contract will allow PARCS staff to begin implementation of the Fresno Jr. BEST Program at Cooper, Tioga, Tehipite, Fort Miller and Terronez FCOE middle school sites. The contracts will begin in September 2008 and will fund the Fresno Jr. BEST program for the remainder of the 2008-2009 school year. Funding for the Fresno Jr. BEST program will supply each of the school sites with operating costs and one 15-hour per week staff member to deliver programming for all sites. 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 Jr. BEST program providers (FCOE and PARCS), is that it will build the strength and leverage needed to acquire grant funds aimed at gang prevention that will serve youth from 6<sup>th</sup> through 8<sup>th</sup> grades. The Fresno Jr. 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.

## **KEY OBJECTIVE BALANCE**

With this funding, PARCS can continue programming opportunities and reach additional participants, which will increase the number of satisfied community members. In addition, this collaborative project offers a unique opportunity for our employees to expand their skill sets by managing an ongoing community service program offered to the community of Fresno. Funding from FCOE for this collaborative program is in addition to the General Fund dollars allocated for the PARCS Fresno Jr. BEST program. This partnership with FCOE will leverage existing Community Services Division program resources to become a viable means of service augmentation with no impact to the General Fund.

## **BACKGROUND**

In FY 2008, Parks, After School, Recreation and Community Services (PARCS), began to operate the first After School Middle School Program, Fresno Jr. BEST, at Fort Miller Middle School. Due to the success of the 'pilot' Fresno Jr. BEST site, PARCS expanded the Fresno Jr. BEST program to additional middle school sites in FY 2009, to include Cooper, Tioga, Tehipite, Fort Miller and Terronez Middle Schools. In FY 2008, PARCS re-deployed the Literacy program resources to expand the Fresno Jr. BEST middle school program 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 \$127,537 of revenue will be received from FCOE as reimbursement for \$127,537 of program expenses. As this partnership with FCOE was anticipated and incorporated into the FY 2009 Adopted Budget, only partial appropriations are needed on the attached resolution to complete the funding needed to implement the services in this contract.

K:\JosieK\Rept to CC\2008....Jr. BEST  
Attachments      Contracts with FCOE  
                            AAR Amendment

## FRESNO SUPERINTENDENT OF SCHOOLS INDEPENDENT CONTRACTOR SERVICES AGREEMENT

### GENERAL INFORMATION:

School/Department:	After School Programs
Budget Class:	ASES/ 21 <sup>st</sup> CCLC
FCSS Contact Person:	Romy Chachere
Budget Manager Approval:	Alix Frazer
Contractor Address:	Fresno City Parks, After School, Recreation and Community Services (PARCS) 2326 Fresno Street, Room 101 Fresno, CA 93721
Contractor's Contact Person:	Randall Cooper
Contractor's Taxpayer Identification # or SSN:	94-6000338

This Independent Contractor Services Agreement is made and entered into effective September 17<sup>th</sup>, 2008, (the "Effective Date") by and between the Fresno County Superintendent of Schools (hereinafter "FCSS") and City of Fresno (hereinafter "CONTRACTOR").

- 1) CONTRACTOR Services. CONTRACTOR agrees to provide the Fresno Jr. BEST program to Cooper Middle School, in accordance with the Exhibit A attached hereto and incorporated by reference herein. The Jr. Best staff will instruct and coordinate the program which consists of Business, Education Service Training and/or Academic Game Plan curriculum.  
  
CONTRACTOR will provide these services for three (3) hours per day or fifteen (15) hours per week for approximately 36 weeks.
- 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.
  - c) The CONTRACTOR is required to fulfill these requirements at its own expense.
  - d) If FCSS in its sole discretion, at any time during the term of this Agreement, requests the removal of any person working for CONTRACTOR, CONTRACTOR shall immediately remove such person or persons from the site.
- 3) Term. This Agreement shall begin on September 17, 2008, and shall terminate on June 30, 2009. There shall be no extension of the term of the agreement without a written agreement signed by both parties.

- 4) Payment. FCSS agrees to pay CONTRACTOR staff at the following rate of Twelve Dollars and NO/100s (\$12.00) per hour. Checks will be made payable to the City of Fresno and delivered to the CONTRACTOR's address as stated above. Payment for staffing shall be limited to Nineteen Thousand Dollars and NO/100s (\$19,000.00). FCSS agrees to pay CONTRACTOR within thirty (30) days of receipt of a detailed invoice. Payment for supplies shall not exceed Thirty-Seven Thousand Three Hundred Forty-Six Dollars and NO/100s (\$37,346.00). Total compensation for all services and materials shall not exceed Fifty-Six Thousand Three Hundred Forty-Six Dollars and NO/100s (\$56,346.00).
- 5) California Residency. CONTRACTOR is a resident of the State of California:   X   YES        NO  
If "NO", CONTRACTOR shall complete and attach California Form 590-Withholding Exemption Certificate.
- 6) Conflict of Interest. CONTRACTOR does not have, or anticipate 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.
- 7) Termination of Agreement. Either FCSS or CONTRACTOR may terminate this Agreement at any time for any reason upon written notice. In the event of early termination, CONTRACTOR shall be paid for satisfactory work performed to the date of termination. The FCSS may then proceed with the work in any manner the FCSS deems proper.
- 8) 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 reasonable 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 agents in the performance of this Agreement.

FCSS shall indemnify, hold harmless and defend CONTRACTOR 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 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.

- 9) 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.
- 10) Independent Contractor Status. While engaged in carrying out the terms and conditions of the Contract, the CONTRACTOR is an independent contractor, and not an officer, employee, agent, partner, or joint venture of the FCSS.
- 11) Worker's Compensation Insurance. CONTRACTOR agrees to provide all necessary worker's compensation insurance for CONTRACTOR's employees, if any, at CONTRACTOR's own cost and expense.

- 13) 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.
- 14) 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 the FCSS.
- 15) 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.
- 16) 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.
- 17) 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.
- 18) Written Notice. Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the company or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the person who gives the notice.

**FCSS:**

Fresno County Office of Education  
 Alix Frazer, Director  
 FCSS After School Programs  
 1111 Van Ness Avenue  
 Fresno, California 93721

**CONTRACTOR:**

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

- 19) 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.
- 20) Compliance with Law. Each and every provision of law and clause required by law to be inserted into this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein. 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.
- 21) 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

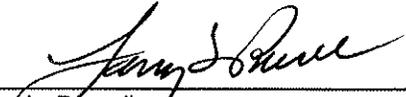
agreement, nor explained or supplemented by evidence of consistent additional terms.

- 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) Execution in Counterparts. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed agreement.

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

**FCSS**

Fresno County Superintendent of Schools

  
 \_\_\_\_\_  
 Larry L. Powell  
 Superintendent

10-23-08  
 \_\_\_\_\_  
 Date

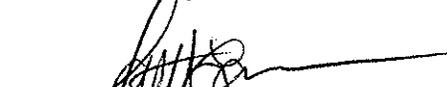
**CONTRACTOR**

City of Fresno

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

\_\_\_\_\_  
 Date

Reviewed by:

  
 \_\_\_\_\_  
 Scott Lamm, Principal  
 Cooper Middle School

10-27-08  
 \_\_\_\_\_  
 Date

ATTEST:  
 Rebecca Klisch, Clerk  
 City of Fresno

\_\_\_\_\_  
 Deputy

\_\_\_\_\_  
 Date

APPROVED AS TO FORM:

James C. Sanchez  
 Fresno City Attorney

  
 \_\_\_\_\_  
 Katherine Bradley, Deputy City Attorney

10/30/08  
 \_\_\_\_\_  
 Date

Attachments:  
 Exhibit A - Scope of Services

## EXHIBIT A

### SCOPE OF SERVICES

#### Agreement between City of Fresno and Fresno County Cooper Middle School

##### FRESNO JR. BEST

Purpose: It is expressly understood that After School Programs provided by the Fresno County Superintendent of Schools represent a partnership between parents, students, and schools and whose goal is to improve outcomes for children in middle schools, high schools, and for their families and surrounding neighborhoods.

Description of Services: The City of Fresno Jr. Business, Education, and Service Training Program (BEST) program shall provide one (1) staff member to facilitate the Jr. BEST and/or Academic Game Plan ("AGP") program curriculum at Cooper Middle School to the students enrolled in the FCSS's After School Program.

Ratio of staff to students shall not exceed 1:20. Jr. BEST will provide one (1) instructor at Cooper Middle School for the 2008/09 academic year.

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

AGP hours of operation will commence at 3:00 p.m. and conclude at 4:30 p.m. on regularly scheduled school days. A typical week of AGP will consist of one (1) to three (3) hours.

On occasion the Jr. BEST/ AGP programs may operate on weekends and weeknights. School officials will be notified when these occurrences take place. Parents/guardians will be notified prior to such events and shall be required to provide written permission for the student's participation in such events.

Value: The monetary value for Jr. BEST including staffing, program supplies and training is Fifty-Six Thousand Three Hundred Forty-Six Dollars and NO/100s ((\$56,346.00) for the 2008/09 academic year.

Funding: The sole source for all funds shall be provided by the After School Education and Safety Grant as awarded to the FCSS.

# FRESNO SUPERINTENDENT OF SCHOOLS INDEPENDENT CONTRACTOR SERVICES AGREEMENT

## GENERAL INFORMATION:

School/Department: After School Programs  
Budget Class: ASES/ 21<sup>st</sup> CCLC  
FCSS Contact Person: Romy Chachere  
Budget Manager Approval: Alix Frazer

Contractor Address: Fresno City Parks, After School, Recreation and  
Community Services (PARCS)  
2326 Fresno Street, Room 101  
Fresno, CA 93721

Contractor's Contact Person: Randall Cooper  
Contractor's Taxpayer Identification # or SSN: 94-6000338

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CONTRACTOR will provide these services for three (3) hours per day or fifteen (15) hours per week for approximately 36 weeks.

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  - 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;
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    - 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
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If "NO", CONTRACTOR shall complete and attach California Form 590-Withholding Exemption Certificate.
- 6) Conflict of Interest. CONTRACTOR does not have, or anticipate 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.
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8) 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 reasonable 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 agents in the performance of this Agreement.

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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.

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- 13) 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 the FCSS.
- 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 delivered in person to the individual or member of the company or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the person who gives the notice.

**FCSS:**

Fresno County Office of Education  
 Alix Frazer, Director  
 FCSS After School Programs  
 1111 Van Ness Avenue  
 Fresno, California 93721

**CONTRACTOR:**

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

- 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. Each and every provision of law and clause required by law to be inserted into this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein. 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) Execution in Counterparts. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed agreement.

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

**FCSS**

Fresno County Superintendent of Schools

  
 \_\_\_\_\_  
 Larry L. Powell  
 Superintendent

\_\_\_\_\_  
 10-23-08  
 \_\_\_\_\_  
 Date

**CONTRACTOR**

City of Fresno

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

\_\_\_\_\_  
 Date

Reviewed by:

\_\_\_\_\_  
 Ray Avila, Principal  
 Tioga Middle School

\_\_\_\_\_  
 Date

ATTEST:  
 Rebecca Klisch, Clerk  
 City of Fresno

\_\_\_\_\_  
 Deputy

\_\_\_\_\_  
 Date

APPROVED AS TO FORM:  
 James C. Sanchez  
 Fresno City Attorney

  
 \_\_\_\_\_  
 Katherine Bradley, Deputy City Attorney

\_\_\_\_\_  
 10/30/08  
 \_\_\_\_\_  
 Date

Attachments:  
 Exhibit A - Scope of Services

## EXHIBIT A

### SCOPE OF SERVICES

#### Agreement between City of Fresno and Fresno County Tioga Middle School

#### FRESNO JR. BEST

Purpose: It is expressly understood that After School Programs provided by the Fresno County Superintendent of Schools represent a partnership between parents, students, and schools and whose goal is to improve outcomes for children in middle schools, high schools, and for their families and surrounding neighborhoods.

Description of Services: The City of Fresno Jr. Business, Education, and Service Training Program (BEST) program shall provide one (1) staff member to facilitate the Jr. BEST and/or Academic Game Plan ("AGP") program curriculum at Tioga Middle School to the students enrolled in the FCSS's After School Program.

Ratio of staff to students shall not exceed 1:20. Jr. BEST will provide one (1) instructor at Tioga Middle School for the 2008/09 academic year.

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

AGP hours of operation will commence at 2:45 p.m. and conclude at 4:15 p.m. on regularly scheduled school days. A typical week of AGP will consist of one (1) to three (3) hours.

On occasion the Jr. BEST/ AGP programs may operate on weekends and weeknights. School officials will be notified when these occurrences take place. Parents/guardians will be notified prior to such events and shall be required to provide written permission for the student's participation in such events.

Value: The monetary value for Jr. BEST including staffing, program supplies and training is Twenty-Six Thousand Five Hundred Ninety-Five Dollars and NO/100s (\$26,595.00) for the 2008/09 academic year.

Funding: The sole source for all funds shall be provided by the After School Education and Safety Grant as awarded to the FCSS.

## FRESNO SUPERINTENDENT OF SCHOOLS INDEPENDENT CONTRACTOR SERVICES AGREEMENT

### GENERAL INFORMATION:

School/Department:	After School Programs
Budget Class:	ASES/ 21 <sup>st</sup> CCLC
FCSS Contact Person:	Romy Chachere
Budget Manager Approval:	Alix Frazer
Contractor Address:	Fresno City Parks, After School, Recreation and Community Services (PARCS) 2326 Fresno Street, Room 101 Fresno, CA 93721
Contractor's Contact Person:	Randall Cooper
Contractor's Taxpayer Identification # or SSN:	94-6000338

This Independent Contractor Services Agreement is made and entered into effective September 17<sup>th</sup>, 2008, (the "Effective Date") by and between the Fresno County Superintendent of Schools (hereinafter "FCSS") and City of Fresno (hereinafter "CONTRACTOR").

- 1) CONTRACTOR Services. CONTRACTOR agrees to provide the Fresno Jr. BEST program to Tehipite Middle School, in accordance with the Exhibit A attached hereto and incorporated by reference herein. The Jr. Best staff will instruct and coordinate the program which consists of Business, Education Service Training and/or Academic Game Plan curriculum.  
  
CONTRACTOR will provide these services for three (3) hours per day or fifteen (15) hours per week for approximately 36 weeks.
- 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.
  - c) The CONTRACTOR is required to fulfill these requirements at its own expense.
  - d) If FCSS in its sole discretion, at any time during the term of this Agreement, requests the removal of any person working for CONTRACTOR, CONTRACTOR shall immediately remove such person or persons from the site.
- 3) Term. This Agreement shall begin on September 17, 2008, and shall terminate on June 30, 2009. There shall be no extension of the term of the agreement without a written agreement signed by both parties.

- 4) Payment. FCSS agrees to pay CONTRACTOR staff at the following rate of Twelve Dollars and NO/100s (\$12.00) per hour. Checks will be made payable to the City of Fresno and delivered to the CONTRACTOR's address as stated above. Payment for staffing shall be limited to Twelve Thousand Dollars and NO/100s (\$12,000.00). FCSS agrees to pay CONTRACTOR within thirty (30) days of receipt of a detailed invoice. Payment for supplies shall not exceed Thirteen Thousand Dollars and NO/100s (\$13,000.00). Total compensation for all services and materials shall not exceed Twenty-Five Thousand Dollars and NO/100s (\$25,000.00).
- 5) California Residency. CONTRACTOR is a resident of the State of California:  X  YES   NO  
If "NO", CONTRACTOR shall complete and attach California Form 590-Withholding Exemption Certificate.
- 6) Conflict of Interest. CONTRACTOR does not have, or anticipate 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.
- 7) Termination of Agreement. Either FCSS or CONTRACTOR may terminate this Agreement at any time for any reason upon written notice. In the event of early termination, CONTRACTOR shall be paid for satisfactory work performed to the date of termination. The FCSS may then proceed with the work in any manner the FCSS deems proper.
- 8) 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 reasonable 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 agents in the performance of this Agreement.

FCSS shall indemnify, hold harmless and defend CONTRACTOR 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 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.

- 9) 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.
- 10) Independent Contractor Status. While engaged in carrying out the terms and conditions of the Contract, the CONTRACTOR is an independent contractor, and not an officer, employee, agent, partner, or joint venture of the FCSS.
- 11) Worker's Compensation Insurance. CONTRACTOR agrees to provide all necessary worker's compensation insurance for CONTRACTOR's employees, if any, at CONTRACTOR's own cost and expense.

- 12) 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.
- 13) 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 the FCSS.
- 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 delivered in person to the individual or member of the company or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the person who gives the notice.

**FCSS:**

Fresno County Office of Education  
 Alix Frazer, Director  
 FCSS After School Programs  
 1111 Van Ness Avenue  
 Fresno, California 93721

**CONTRACTOR:**

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

- 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. Each and every provision of law and clause required by law to be inserted into this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein. 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) Execution in Counterparts. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed agreement.

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

**FCSS**

Fresno County Superintendent of Schools

  
 \_\_\_\_\_  
 Larry C. Powell  
 Superintendent

10-23-08  
 \_\_\_\_\_  
 Date

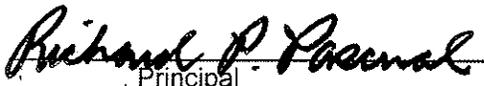
**CONTRACTOR**

City of Fresno

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

\_\_\_\_\_  
 Date

Reviewed by:

  
 \_\_\_\_\_  
 Richard P. Pascual  
 Principal  
 Tehipite Middle School

10/28/09  
 \_\_\_\_\_  
 Date

ATTEST:  
 Rebecca Klisch, Clerk  
 City of Fresno

\_\_\_\_\_  
 Deputy

\_\_\_\_\_  
 Date

APPROVED AS TO FORM:

James C. Sanchez  
 Fresno City Attorney

  
 \_\_\_\_\_  
 Katherine Bradley, Deputy City Attorney

10/30/08  
 \_\_\_\_\_  
 Date

Attachments:  
 Exhibit A - Scope of Services

## EXHIBIT A

### SCOPE OF SERVICES

#### Agreement between City of Fresno and Fresno County Tehipite Middle School

##### FRESNO JR. BEST

Purpose: It is expressly understood that After School Programs provided by the Fresno County Superintendent of Schools represent a partnership between parents, students, and schools and whose goal is to improve outcomes for children in middle schools, high schools, and for their families and surrounding neighborhoods.

Description of Services: The City of Fresno Jr. Business, Education, and Service Training Program (BEST) program shall provide one (1) staff member to facilitate the Jr. BEST and/or Academic Game Plan ("AGP") program curriculum at Tehipite Middle School to the students enrolled in the FCSS's After School Program.

Ratio of staff to students shall not exceed 1:20. Jr. BEST will provide one (1) instructor at Tehipite Middle School for the 2008/09 academic year.

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

Dance and mixed martial arts programming will be supplied based on schedule availability provided by Tehipite Middle School.

On occasion the Jr. BEST/ AGP programs may operate on weekends and weeknights. School officials will be notified when these occurrences take place. Parents/guardians will be notified prior to such events and shall be required to provide written permission for the student's participation in such events.

Value: The monetary value for Jr. BEST including staffing, program supplies and training is Twenty-Five Thousand Dollars and NO/100s (\$25,000.00) for the 2008/09 academic year.

Funding: The sole source for all funds shall be provided by the After School Education and Safety Grant as awarded to the FCSS.

# FRESNO SUPERINTENDENT OF SCHOOLS INDEPENDENT CONTRACTOR SERVICES AGREEMENT

## GENERAL INFORMATION:

School/Department: After School Programs  
Budget Class: ASES/ 21<sup>st</sup> CCLC  
FCSS Contact Person: Romy Chachere  
Budget Manager Approval: Alix Frazer

Contractor Address: Fresno City Parks, After School, Recreation and  
Community Services (PARCS)  
2326 Fresno Street, Room 101  
Fresno, CA 93721

Contractor's Contact Person: Randall Cooper  
Contractor's Taxpayer Identification # or SSN: 94-6000338

This Independent Contractor Services Agreement is made and entered into effective September 17<sup>th</sup>, 2008, (the "Effective Date") by and between the Fresno County Superintendent of Schools (hereinafter "FCSS") and City of Fresno (hereinafter "CONTRACTOR").

- 1) CONTRACTOR Services. CONTRACTOR agrees to provide the Fresno Jr. BEST program to Fort Miller Middle School, in accordance with the Exhibit A attached hereto and incorporated by reference herein. The Jr. Best staff will instruct and coordinate the program which consists of Business, Education Service Training and/or Academic Game Plan curriculum.

CONTRACTOR will provide these services for three (3) hours per day or fifteen (15) hours per week for approximately 36 weeks.

- 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.
  - c) The CONTRACTOR is required to fulfill these requirements at its own expense.
  - d) If FCSS in its sole discretion, at any time during the term of this Agreement, requests the removal of any person working for CONTRACTOR, CONTRACTOR shall immediately remove such person or persons from the site.
- 3) Term. This Agreement shall begin on September 17, 2008, and shall terminate on June 30, 2009. There shall be no extension of the term of the agreement without a written agreement signed by both parties.

- 4) Payment. FCSS agrees to pay CONTRACTOR staff at the following rate of Twelve Dollars and NO/100s (\$12.00) per hour. Checks will be made payable to the City of Fresno and delivered to the CONTRACTOR's address as stated above. Payment for staffing shall be limited to Six Thousand Dollars and NO/100s (\$6,000.00). FCSS agrees to pay CONTRACTOR within thirty (30) days of receipt of a detailed invoice. Payment for supplies shall not exceed Four Thousand Dollars and NO/100s (\$4,000.00). Total compensation for all services and materials shall not exceed Ten Thousand Dollars and NO/100s (\$10,000.00).
- 5) California Residency. CONTRACTOR is a resident of the State of California:  X  YES   NO  
If "NO", CONTRACTOR shall complete and attach California Form 590-Withholding Exemption Certificate.
- 6) Conflict of Interest. CONTRACTOR does not have, or anticipate 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.
- 7) Termination of Agreement. Either FCSS or CONTRACTOR may terminate this Agreement at any time for any reason upon written notice. In the event of early termination, CONTRACTOR shall be paid for satisfactory work performed to the date of termination. The FCSS may then proceed with the work in any manner the FCSS deems proper.
- 8) 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 reasonable 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 agents in the performance of this Agreement.

FCSS shall indemnify, hold harmless and defend CONTRACTOR 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 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.

- 9) 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.
- 10) Independent Contractor Status. While engaged in carrying out the terms and conditions of the Contract, the CONTRACTOR is an independent contractor, and not an officer, employee, agent, partner, or joint venture of the FCSS.
- 11) Worker's Compensation Insurance. CONTRACTOR agrees to provide all necessary worker's compensation insurance for CONTRACTOR's employees, if any, at CONTRACTOR's own cost and expense.

- 12) 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.
- 13) 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 the FCSS.
- 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 delivered in person to the individual or member of the company or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the person who gives the notice.

**FCSS:**

Fresno County Office of Education  
 Alix Frazer, Director  
 FCSS After School Programs  
 1111 Van Ness Avenue  
 Fresno, California 93721

**CONTRACTOR:**

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

- 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. Each and every provision of law and clause required by law to be inserted into this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein. 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) Execution in Counterparts. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed agreement.

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

**FCSS**

Fresno County Superintendent of Schools

  
 \_\_\_\_\_  
 Larry L. Powell  
 Superintendent

10-23-08  
 \_\_\_\_\_  
 Date

**CONTRACTOR**

City of Fresno

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

\_\_\_\_\_  
 Date

Reviewed by:

  
 \_\_\_\_\_  
 Debbie Buckman, Principal  
 Fort Miller Middle School

10-28-08  
 \_\_\_\_\_  
 Date

ATTEST:

Rebecca Klisch, Clerk  
 City of Fresno

\_\_\_\_\_  
 Deputy

\_\_\_\_\_  
 Date

APPROVED AS TO FORM:

James C. Sanchez  
 Fresno City Attorney

  
 \_\_\_\_\_  
 Katherine Bradley, Deputy City Attorney

10/30/08  
 \_\_\_\_\_  
 Date

Attachments:  
 Exhibit A - Scope of Services

## EXHIBIT A

### SCOPE OF SERVICES

#### Agreement between City of Fresno and Fresno County Fort Miller Middle School

##### FRESNO JR. BEST

Purpose: It is expressly understood that After School Programs provided by the Fresno County Superintendent of Schools represent a partnership between parents, students, and schools and whose goal is to improve outcomes for children in middle schools, high schools, and for their families and surrounding neighborhoods.

Description of Services: The City of Fresno Jr. Business, Education, and Service Training Program (BEST) program shall provide one (1) staff member to facilitate the Jr. BEST program curriculum at Fort Miller Middle School to the students enrolled in the FCSS's After School Program.

Ratio of staff to students shall not exceed 1:20. Jr. BEST will provide one (1) instructor at Fort Miller Middle School for the 2008/09 academic year.

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

On occasion the Jr. BEST/ Academic Game Plan ("AGP") programs may operate on weekends and weeknights. School officials will be notified when these occurrences take place. Parents/guardians will be notified prior to such events and shall be required to provide written permission for the student's participation in such events.

Value: The monetary value for Jr. BEST including staffing, program supplies and training is Ten Thousand Dollars and NO/100s (\$10,000.00) for the 2008/09 academic year.

Funding: The sole source for all funds shall be provided by the After School Education and Safety Grant as awarded to the FCSS.

002

**FRESNO COUNTY OFFICE OF EDUCATION  
INDEPENDENT CONTRACTOR SERVICES AGREEMENT**

**GENERAL INFORMATION:**

School/Department: After School Programs  
Budget Class: ASES/ 21<sup>st</sup> CCLC  
FCOE Contact Person: Romy Chachere  
Budget Manager Approval: Alix Frazer  
Contractor Address: Fresno City Parks, After School, Recreation and  
Community Services (PARCS)  
2326 Fresno Street, Room 101  
Fresno, CA 93721

Contractor's Contact Person: Randall Cooper  
Contractor's Taxpayer Identification # or SSN: 94-6000338  
Requisition #: \_\_\_\_\_

This Independent Contractor Services Agreement is made and entered into effective September 17, 2008 (the "Effective Date") by and between the Fresno County Office of Education ("FCOE") and City of Fresno ("Contractor").

1. Contractor Services. Contractor agrees to provide the Fresno Jr. BEST program to Terronez Middle School, in accordance with the Exhibit A attached hereto and incorporated by reference herein such program will be funded by FCOE Grant. The staff will instruct and coordinate programs in Business, Education Service Training and/ or Academic Game Plan.

The parties anticipate that the Contractor will provide these services for three hours per day or 15 hours per week for approximately 36 weeks.

2. Contractor Qualifications. Contractor represents that it has in effect all licenses, permissions and has otherwise all legal qualifications to perform this Agreement
3. Term. This Agreement shall begin on September 17, 2008, and shall terminate on June 30, 2009. There shall be no extension of the term of the agreement without a written agreement signed by both parties.

4. Payment. FCOE agrees to pay Contractor at the following staff rate of \$12.00 per hour. Checks will be made payable to City of Fresno and delivered to the contractors address above. Payment shall be limited to amount written in this paragraph, unless specifically indicated in Paragraph 5. FCOE agrees to pay Contractor within thirty (30) days of receipt of a detailed invoice.  
**Staffing to cost \$0**

5. Incidental Expenses:
  - a. Lodging \$ -0- Actual cost of single occupancy. Not to exceed \$100 per night. \*Receipt Required.
  - b. Meals \$ -0- Reimbursement limited to actual cost up to the following rates: Breakfast \$6.00, Lunch \$9.00, Dinner \$15.00. \*Receipt Required.
  - c. Travel \$ -0- Actual cost by common carrier. Private car expenses reimbursed at .48 cents per mile. \*Receipt Required.
  - d. Supplies \$ 9,596 As negotiated with school/department contracting for service.

**e. Total Annual Estimated Cost (Sum of paragraphs 4 and 5a - d): \$9,596.00**  
(appropriated according to Exhibits A through G for the respective middle School)

6. California Residency. Contractor is a resident of the State of California:  X  YES   NO  
If "NO", Contractor shall complete and attach California Form 590-Withholding Exemption Certificate.
7. 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.
8. Termination of Agreement. Either FCOE or Contractor may terminate this Agreement at any time for any reason upon written notice. In the event of early termination, Contractor shall be paid for satisfactory work performed to the date of termination. The FCOE may then proceed with the work in any manner the FCOE deems proper.
9. Indemnity. The Contractor shall indemnify, hold harmless and defend FCOE and each of its officers, officials, employees, agents and volunteers 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 FCOE, 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, agents or volunteers in the performance of this Agreement.

FCOE shall indemnify, hold harmless and defend Contractor and each of its officers, officials, employees, agents and volunteers 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, FCOE 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 FCOE or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement.

In the event of concurrent negligence on the part of Contractor or any of its officers, officials, employees, agents or volunteers, and FCOE or any of its officers, officials, employees, agents or volunteers, 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.

10. Insurance. It is understood and agreed that Contractor, Fresno Unified School District (FUSD) and FCOE 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.
11. Independent Contractor Status. While engaged in carrying out the terms and conditions of the Contract, the Contractor is an independent contractor, and not an officer, employee, agent, partner, or joint venture of the FCOE.
12. Worker's Compensation Insurance. Contractor agrees to provide all necessary worker's compensation insurance for Contractor's employees, if any, at Contractor's own cost and expense.

13. Taxes. Contractor agrees that Contractor has no entitlement to any future work from the FCOE or to any employment or fringe benefits from the FCOE. Payments to the Contractor pursuant to this Agreement will be reported to Federal and State taxing authorities as required. FCOE will not withhold any money from compensation payable to Contractor. In particular, FCOE 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.
14. 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 on the FCOE.
15. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Contractor and the FCOE and their respective successors and assigns.
16. 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.
17. 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.
18. 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.
19. Written Notice. Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the company or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the person who gives the notice.

FCOE:

Alix Frazer  
Director, FCOE After School Programs  
1111 Van Ness  
Fresno, California 93721

Contractor:

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

20. Non-Discrimination. It is the policy of the FCOE that there shall be no discrimination against any of Contractor's prospective or active employees because of race, color, ancestry, national origin, sex or religious creed. Therefore, the Contractor agrees to comply with applicable federal and California laws.
21. Compliance with Law. Each and every provision of law and clause required by law to be inserted into this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein. 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.
22. 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.



**SCOPE OF SERVICES**  
**Agreement between City of Fresno**  
**and Fresno County Office of Education Site**  
**at Terronez 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 program curriculum at Terronez Middle School. In addition, Jr. BEST will provide programming in the area of dance and mixed martial arts.

Staff will provide instruction for 20 students per one (1) instructor. Jr. BEST will provide 1 instructor(s) at Terronez Middle School for the 2008/09 academic year.

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

Dance and mixed martial arts programming will be supplied based on schedule availability provided by Terronez Middle School

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/ Dance and Mixed Martial Arts including staffing, program supplies and training is \$10,000.00 for the 2008/09 academic year.

**Funding Sources**

Fresno County Office of Education: After School Education and Safety Grant

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO ADOPTING THE 42<sup>nd</sup> AMENDMENT TO THE ANNUAL APPROPRIATION RESOLUTION NO. 2008-162 APPROPRIATING \$25,900 IN THE PARKS, AFTER SCHOOL, RECREATION AND COMMUNITY SERVICES DEPARTMENT TO CONDUCT COLLABORATIVE AFTER SCHOOL MIDDLE SCHOOL PROGRAMS (FRESNO JR. BEST) AT FIVE FRESNO UNIFIED SCHOOL DISTRICT MIDDLE SCHOOL SITES RUNNING THROUGH JUNE 30, 2009

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FRESNO:

THAT PART III of the Annual Appropriation Resolution No. 2008-162 be and is hereby amended as follows:

	<u>Increase/(Decrease)</u>
TO: PARKS, AFTER SCHOOL, RECREATION & COMMUNITY SERVICES DEPARTMENT General Fund	\$ 25,900

THAT account titles and numbers requiring adjustment by this Resolution are as follows:

General Fund

Revenues:

Account: <b>33802</b> County-Miscellaneous	<u>\$ 25,900</u>
Fund: <b>10101</b>	
Org Unit: <b>170209</b>	
Total Revenues	<u>\$ 25,900</u>

Appropriations:

Account: <b>51201</b> Non-Permanent Salaries	\$ 10,400
<b>56120</b> Athletic & Recreation	<u>15,500</u>
Fund: <b>10101</b>	
Org Unit: <b>170209</b>	
KRA: <b>0103011000</b>	
Total Appropriations	<u>\$ 25,900</u>

THAT the purpose is to appropriate \$25,900 in the Parks, After School, Recreation and Community Services Department to conduct collaborative after school middle school programs (Fresno Jr. Best) at five Fresno Unified School District Middle School sites running through June 30, 2009.

**CLERK'S CERTIFICATION**

STATE OF CALIFORNIA }  
COUNTY OF FRESNO } ss.  
CITY OF FRESNO }

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing Resolution was adopted by the Council of the City of Fresno, California, at a regular meeting thereof, held on the \_\_\_\_\_ Day of \_\_\_\_\_, 2008

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

Mayor Approval: \_\_\_\_\_, 2008  
Mayor Approval/No Return: \_\_\_\_\_, 2008  
Mayor Veto: \_\_\_\_\_, 2008  
Council Override Veto: \_\_\_\_\_, 2008

REBECCA E. KLISCH  
City Clerk

\_\_\_\_\_