City of FRESNO REPORT TO THE CITY COUNCIL

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| AGENDA ITEM NO. | 1 G |
| COUNCIL MEETING | 3/03/2009 |
| APPROVED BY | |
| DEPARTMENT DIRECTOR | |
| CITY MANAGER | |

March 3, 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:** 1) APPROVAL OF A CONTRACT WITH FRESNO COUNTY OFFICE OF EDUCATION TO PROVIDE UP TO $5,000 FOR THE PARKS, AFTER SCHOOL, RECREATION AND COMMUNITY SERVICES DEPARTMENT TO CONDUCT THE ACADEMIC GAME PLAN PROGRAM AT YOSEMITE MIDDLE SCHOOL RUNNING THROUGH JUNE 30, 2009

2) A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO ADOPTING THE 70th AMENDMENT TO THE ANNUAL APPROPRIATION RESOLUTION NO. 2008-162 TO APPROPRIATE $26,300 IN THE PARKS, AFTER SCHOOL, RECREATION AND COMMUNITY SERVICES DEPARTMENT TO CONDUCT A COLLABORATIVE AFTER SCHOOL PROGRAMS AT FOUR FRESNO UNIFIED SCHOOL DISTRICT SITES THROUGH JUNE 30, 2009

## RECOMMENDATIONS

Staff recommends that the City Council approve the attached agreement with the Fresno County Office of Education (FCOE) and attached AAR amendment for corresponding appropriations for this contract and three other service contracts being implemented at the same time (through separate Council items); and authorize the Director of Parks, After School, Recreation and Community Services (PARCS) to execute the attached agreement on behalf of the City. Approval of this contract and the corresponding appropriations will allow PARCS to receive $5,000 in FY 2009 to cover personnel and operating costs associated with providing the Academic Game Plan program at FUSD's Yosemite Middle school site.

## EXECUTIVE SUMMARY

The attached contractor service agreement is being submitted for consideration and approval by both the Council and FCOE. The contractual agreement would establish a six month commitment at $5,000 for a full reimbursement of services from FCOE. The contract will allow PARCS staff to begin implementation of the Academic Game Plan Program at FUSD's Yosemite middle school site. The contract will begin in February 2009 and will fund the Academic Game Plan program for the remainder of the 2008-2009 school year. Funding for the Academic Game Plan program will supply the school site with operating costs and one 3-hour per week staff member to deliver programming. The staff costs and related overhead will be fully recovered under the agreement, so no additional General Fund dollars are requested to implement the program. The Academic Game Plan 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 Academic Game Plan. 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, Academic Game Plan, at Roosevelt High School. Due to the success of the 'pilot' Academic Game Plan site, PARCS expanded the Academic Game Plan program to additional school sites in FY 2009, to include Yosemite Middle Schools. In FY 2008, PARCS re-deployed the Literacy program resources to expand the Fresno BEST program and create the Academic Game Plan study skills 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 $5,000 of revenue will be received from FCOE as reimbursement for $5,000 of program expenses. All service contracts with FUSD and FCOE previously approved by Council are current in their payments to the City.

Attachments Contract with FCOE
70th Amendment to the AAR

**AGREEMENT**
**between the**
**Fresno County Superintendant of School**
**and the**
**CITY OF FRESNO**

**After School Safety and Enrichment for Teens**
**2008-2009**

GENERAL INFORMATION

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|---|---|
| School Department: | After School Programs |
| Program: | ASES/ 21st CCLC |
| District Contact Person: | Keith Travis |
| **Contractor:** | |
| Contractor: | City of Fresno |
| Contractor Department/Address: | Fresno City Parks and Recreation<br>2326 Fresno St #101<br>Fresno, CA 93721 |
| Contractor's Contact Person: | Randall Cooper |
| Contractor's Taxpayer Identification Number or SSN: | 94-6000338 |
| District: | Fresno County Superintendant of School |
| School Site/Address: | Yosemite Middle School<br>1292 N 9th St<br>Fresno, CA 93703 |

This Agreement is made and entered into this 2nd day of February, 2009, by and between the Fresno County Superintendant of School (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: Academic Game Plan instruction for students enrolled in the After School Program located at Fresno County Superintendant of School's Yosemite Middle School.

   One (1) instructor shall be responsible for providing such services one (1) day per week of the After School Program is operated at the site from approximately 2:30 p.m. to 5:30 p.m. A day of service shall consist of three (3) hours. The After School Program operates according to the school site's calendar, which concludes June 30, 2009.

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.

3. Term. This Agreement shall begin on February 2, 2009, 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. Compensation. FCSS shall pay CONTRACTOR a maximum of Five Thousand Dollars and No/100s ($5,000.00) for all services and materials provided under the terms of this Agreement. Such compensation includes the following:

   a. Payment to CONTRACTOR at the rate of One Hundred Twenty Dollars and 75/100s ($120.75) per service day for each day of the instructor's services as described in this Agreement. Maximum compensation for Leader services shall not exceed Two Thousand Two Hundred Ninety-Four Dollars and 25/100s ($2,294.25).

   b. Payment to the CONTRACTOR of Two Thousand Seven Hundred Dollars and No/100s ($2,705.75) for the cost of materials, supplies, and deliverables 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,
Alix Frazer, Director
FCSS After School Programs
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

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

Date: 2/16/09

REVIEWED BY:

Kathy Chambas, Principal
Yosemite Middle School

Date: 2/3/09

**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: 2/4/09

APPROVED BY
Fresno City Council

Date of Approval: _____

Attest: _____

**RESOLUTION NO. _____**

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO ADOPTING THE 70th AMENDMENT TO THE ANNUAL APPROPRIATION RESOLUTION NO. 2008-162 TO APPROPRIATE $26,300 IN THE PARKS, AFTER SCHOOL, RECREATION AND COMMUNITY SERVICES DEPARTMENT TO CONDUCT A COLLABORATIVE AFTER SCHOOL PROGRAMS AT FOUR FRESNO UNIFIED SCHOOL DISTRICT SITES 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:

| | Increase/(Decrease) |
|---|---|
| TO: PARKS, AFTER SCHOOL, RECREATION & COMMUNITY SERVICES DEPARTMENT | |
| General Fund | $ 26,300 |

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

General Fund

| | | |
|---|---|---|
| Revenues: | | |
| Account: **33809** Fresno Unified School District | $ 10,000 | |
| **33847** Fresno County Office of Education | 5,000 | |
| Fund: **10101** | | |
| Org Unit: **170209** | | |
| Total Revenues | | $ 15,000 |

| | | |
|---|---|---|
| Revenues: | | |
| Account: **33847** Fresno County Office of Education | $ 11,300 | |
| Fund: **10101** | | |
| Org Unit: **170211** | | |
| Total Revenues | | $ 11,300 |

| | Increase / (Decrease) |
|---|---|
| Appropriations: | |
| Account: **56107** Office Supplies | $ 700 |
| Fund: **10101** | |
| Org Unit: **170201** | |
| KRA: **0401001000** | |
| Total Appropriations | $ 700 |

| | |
|---|---|
| Appropriations: | |
| Account: **51201** Non-Permanent Salaries | $ 6,800 |
| **56120** Athletic & Recreation | 7,800 |
| Fund: **10101** | |
| Org Unit: **170209** | |
| KRA: **0401001000** | |
| Total Appropriations | $ 14,600 |

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|---|---|
| Appropriations: | |
| Account: **51201** Non-Permanent Salaries | $ 6,000 |
| **56120** Athletic & Recreation | 5,000 |
| Fund: **10101** | |
| Org Unit: **170211** | |
| KRA: **0401001000** | |
| Total Appropriations | $ 11,000 |

THAT the purpose is to appropriate $26,300 in the Parks, After School, Recreation and Community Services Department to conduct a collaborative After School Programs at four Fresno Unified School District sites 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 _____, 2009

AYES:
NOES:
ABSENT:
ABSTAIN:

Mayor Approval: _____, 2009
Mayor Approval/No Return: _____, 2009
Mayor Veto: _____, 2009
Council Override Veto: _____, 2009

REBECCA E. KLISCH
City Clerk

_____