



AGENDA ITEM NO. 1 L

COUNCIL MEETING 6/18/09

APPROVED BY

DEPARTMENT DIRECTOR

CITY MANAGER

June 18, 2009

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

**BY:** MARY JANE FITZPATRICK, Recreation Manager   
Parks, After School, Recreation and Community Services Department

**SUBJECT:** APPROVE A MOU BETWEEN THE CITY OF FRESNO AND THE  
FRESNO COUNTY ECONOMIC OPPORTUNITIES COMMISSION (EOC) FOR A  
YOUTH NUTRITIONAL ASSISTANCE PROGRAM

#### RECOMMENDATIONS

It is recommended that the Council approve the attached MOU between the City of Fresno and the Economic Opportunities Commission (EOC), to provide a nutrition assistance program for youth during *out of school* periods throughout the year. The proposed Youth Nutrition Assistance program agreement is contingent upon available and allocated funding in any fiscal year.

#### EXECUTIVE SUMMARY

Parks, After School, Recreation and Community Services (PARCS) along with EOC proposes to operate (17) staffed Neighborhood Centers during the *out of school* periods for children to receive breakfast, lunch or snacks along with recreation enrichment programs for the following Fresno Unified School District (FUSD) intersession breaks:

- Summer – July 1 through August 14
- Thanksgiving – November 23 through 27
- Christmas – December 21 through January 8
- Spring – March 29 through April 6

PARCS is aware that most children attending our park site programs are at a loss for things to do during FUSD breaks. The reality is that many of those children are home unattended until our park sites open at 3:00 p.m. Additionally, school nutrition programs (free or reduced lunches) are not available during school breaks and children are coming to us, hungry. PARCS proposes to expand our level of service during summer and holiday breaks to serve breakfast, lunch or snacks and to offer recreation activities. Many families we serve are not able to afford child care during school breaks and although we do not see ourselves as childcare providers, most parents do.

The Youth Nutrition Assistance program agreement is contingent upon available and allocated funding in any fiscal year. See fiscal impact for budget detail.

**KEY OBJECTIVE BALANCE**

The Youth Nutrition Assistance program will be a joint effort with a county agency to provide a needed service for the health and welfare of children during the period of time when they are not in school. Addressing the needs of the community is providing real customer service. Creating partnership opportunities with outside agencies promotes "One Fresno".

**BACKGROUND**

The Fresno EOC is eager to participate in this service for children that receive free or reduced lunches when school is in session. They appreciate the need and would like to assist during FUSD break periods. As providers of the "Summer Sack Lunch" program for PARCS throughout the years, EOC has provided impact studies confirming the fact that children are more likely to participate in nutrition programs when activities are also provided. Children coming to a center for "feeding" only, often feel stigmatized as being hungry and poor. EOC believes that programs should be the focus and meals should become supplemental to fun activities.

**FISCAL IMPACT**

The funding for this program has been included in the Department's FY 2010 Proposed Budget. As detailed below, \$117,300 will cover all staffing and additional utility costs at the 17 program sites. The attached agreement is contingent upon available and allocated funding in any fiscal year.

**Youth Holistic Lifeline Detail**

	# of Temp Staff	# of Weeks	Hrs Per Week	Hourly Rate	Total	Fringe	Per Site Cost
Easter Break	2	1	25	\$8.45	\$ 423	\$ 33	\$ 456
Summer	2	9	25	\$8.45	3,803	298	4,101
Thanksgiving	2	1	25	\$8.45	423	33	456
Christmas Break	2	3	25	\$8.45	1,268	99	1,367
							\$ 6,379 per site cost x 17 sites
Total Personnel (17 sites)							\$ 108,449
Utility & Supply Cost Est.							8,800
<b>Grand Total</b>							<b>\$ 117,249</b>

K:\Josie\Rept to CC\MOU Youth Nutritional ...  
 6/10/09

Attachment:  
 MOU between City of Fresno and EOC

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE CITY OF FRESNO (COF) AND FRESNO COUNTY ECONOMIC  
OPPORTUNITIES COMMISSION (EOC)**

This Memorandum of Understanding (MOU) is entered into by and between the CITY OF FRESNO, CALIFORNIA, a municipal corporation, through its Parks, After-School, Recreation and Community Service Department ("COF"), and FRESNO COUNTY ECONOMIC OPPORTUNITIES COMMISSION (FFC).

**WITNESS**

**WHEREAS**, the COF and EOC are partnering in a cooperative effort to feed children when they are out of school. This intersession expansion will allow children to receive free meals at various City sites within the Fresno community and;

**WHEREAS**, EOC has provided nutritious and well-balanced meals, using the freshest and most wholesome foods since the early 70s.

**WHEREAS**, EOC staff cooks daily meals for children participating in Head Start, youth involved in educational and recreational activities, and the elderly are active in the senior programs. The Food Preparation Center is a consolidated state-of-the-art food production facility capable of producing 12,000 meals daily.

**WHEREAS**, City of Fresno has all legal right and authority to utilize the EOC Food Service Program since it is a federal program funded by the USDA and administered by the California Department of Education, as more completely described in EOC's Food Services press release dated June 16, 2008 attached here to as Exhibit "A" and incorporated herein.

**NOW, THEREFORE**, in consideration of the above recitals, which recitals are contractual in nature, the mutual covenants herein contained and such other and further consideration as is hereby acknowledged, the parties agree as follows:

**PARTICIPATING AGENCIES AND DESIGNATED CONTACT PERSONS**

**COF:**

Randall Cooper  
Director, Fresno Parks, After-School, Recreation and Community Services  
2326 Fresno Street, RM 101  
Fresno, CA 93721  
(559) 621-2900

**FRESNO COUNTY ECONOMIC OPPORTUNITIES COMMISSION :**

Gary Joseph, Director  
Food Services & Transit Systems  
3100 W. Nielsen Avenue  
Fresno, CA 93706  
(559) 266-3663 Phone  
(559) 266-3669 Fax  
[gary.joseph@fresnoeoc.org](mailto:gary.joseph@fresnoeoc.org)

## **ROLES, CONTRIBUTIONS AND RESPONSIBILITIES**

### **THE CITY OF FRESNO hereby agrees to:**

1. Provide a facility for the intersession expansion free meal program.
2. Provide staff
3. Provide proper insurance.

### **THE FRESNO COUNTY ECONOMIC OPPORTUNITIES COMMISSION agrees to:**

1. Provide free meals through the Summer Food Service Program (SFSP) for qualifying children at designated PARCS sites for the intersession expansion free meal program.
2. Provide staff.
3. Provide proper insurance.

## **REIMBURSEMENT TO PARTIES**

Each party shall bear any and all of their costs incurred in pursuit of this MOU. Without limiting the foregoing, nothing in this MOU shall commit the taxing authority or general fund of the City.

## **EFFECTIVENESS, DURATION AND TERMINATION**

This MOU shall be effective upon its complete execution by the parties' authorized agents and shall remain in effect for an initial term running through July 1, 2014.

This MOU shall renew automatically from year to year, provided that either party may at any time terminate this Agreement (i) without cause at the party's convenience by giving not less than 2 months (sixty (60) days) prior written notice to the other party, (ii) with cause upon written notice to the other party following the other party's failure to reasonably cure an event of non-performance hereunder following thirty (30) days written notice thereof, and (iv) in the event City's non-appropriation of funds sufficient to meet its obligations hereunder during any City fiscal year of this Agreement, or insufficient funding for the project. Termination shall be effective as of the date specified in said notice of termination, and

## **RECORDKEEPING AND PERFORMANCE DATA**

Each party shall keep and maintain proper records and documentation sufficient to substantiate its contributions hereunder, and shall make such available for review and audit upon the reasonable request of the other party for a period of three (3) years following expiration or earlier termination of this MOU.

## **COMPLIANCE WITH GOVERNING LAW**

Each party shall comply with all federal, state and local laws, rules and regulations in its pursuit hereof. No party in its performance of this MOU shall employ discriminatory practices on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, and status as a disabled veteran or veteran of the Vietnam era.

## **CAPACITY OF COF AND FRESNO COUNTY ECONOMIC OPPORTUNITIES COMMISSION**

Each party is acting in an independent capacity. Nothing in this MOU and nothing in the course of dealings between the parties hereunder shall be deemed to create any fiduciary relationship, trust, partnership, joint venture, agency or employment relationship, jointly and severally.

deemed an employee, partner or agent of the City for any purpose. However, the City shall retain the right to verify that EOC is performing its respective obligations in accordance with the terms of the Contract.

Because of its status as an independent contractor, EOC and its officers, agents, and employees shall have absolutely no right to employment rights and benefits available to City employees. EOC shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, EOC shall be solely responsible, to indemnify, defend and save City harmless for all matters relating to employment and tax withholding for a payment of EOC's employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in City employment benefits, entitlements, programs and/or funds offered employees of City whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, EOC may be providing services to others unrelated to City or to this Agreement.

### **INDEMNIFICATION AND INSURANCE**

EOC shall indemnify, hold harmless and defend COF 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 COF, EOC 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 have arisen directly or indirectly from the negligent or intentional acts or omissions or willful misconduct of EOC or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement.

COF shall indemnify, hold harmless and defend EOC 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 COF, EOC 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 have arisen directly or indirectly from the negligent or intentional acts or omissions or willful misconduct of COF or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by COF of governmental immunities including California Government Code Section 810 et seq.

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

It is understood and agreed that EOC and COF maintain insurance policies or self-insurance programs to fund their respective liabilities. The parties agree that such respective programs or policy coverage for Workers' Compensation shall contain a waiver of subrogation as to the other party and each of its officers, officials, agents, employees and volunteers. Evidence of

Insurance, e.g., Certificates of Insurance or other similar documentation, shall not be required of either party under this Agreement.

This section shall survive termination or expiration of this MOU.

#### **ATTORNEY'S FEES**

If a party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this MOU, the prevailing party in such proceeding or action shall be entitled to recover from the other party its/their reasonable attorney's fees and legal expenses.

#### **PRECEDENCE OF DOCUMENTS**

In the event of any conflict between the body of this MOU and any exhibit/attachment hereto, the terms and conditions of the body of this MOU shall control and take precedence over terms and conditions expressed within the exhibit/attachment. Furthermore, any terms or conditions contained within any exhibit/attachment hereto which purport to modify the allocation of responsibility or liability between the parties, provided for within the body of this MOU, shall be null and void.

#### **NOTICES**

Any notice required or intended to be given to a party under the terms of this MOU shall be in writing and shall be deemed to be duly given if delivered personally or deposited into the United States mail, return receipt requested, with postage prepaid, addressed to the party to which notice is to be given at the party's address set forth in Section 1 of this MOU or at such other address as the parties may from time to time designate by written notice.

#### **BINDING**

Once this MOU is signed by all the parties, it shall be binding upon, and shall inure to the benefit of, the parties, and each party's respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

#### **ASSIGNMENT**

There shall be no assignment by any party of its rights or obligations under this MOU without the prior written approval of the other party. Any attempted assignment by a party, its successors or assigns, shall be null and void unless approved in writing by the other party.

#### **WAIVER**

The waiver by any party of a breach by the other of any provision of this MOU shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this MOU.

No provisions of this MOU may be waived unless in writing and approved by and signed by all parties to this MOU. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

## **GOVERNING LAW AND VENUE**

This MOU shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this MOU and any rights and duties hereunder shall be Fresno, California.

## **HEADINGS**

The section headings in this MOU are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this MOU.

## **SEVERABILITY**

The provisions of this MOU are severable. The invalidity or unenforceability of any one provision in this MOU shall not affect the other provisions.

## **INTERPRETATION**

The parties acknowledge that this MOU in its final form is the result of the combined efforts of the parties and that, should any provision of this MOU be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this MOU in favor or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

## **ENTIRE MOU**

It is mutually understood and agreed that the foregoing constitutes the entire MOU between the parties. Any modifications or amendments to this MOU must be in writing signed by an authorized agent of each party.

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IN WITNESS THEREOF, the parties have caused their authorized agents to execute this MOU:

**CITY OF FRESNO**

**FRESNO COUNTY ECONOMIC OPPORTUNITIES COMMISSION**

  
By: Randall Cooper, Director  
Parks, Afterschool Recreation and  
Community Services

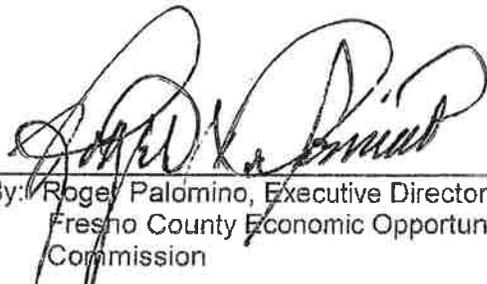
 4-9-07  
By: Gary Joseph,  
Food Service and Transit System  
Director

**APPROVED AS TO FORM:**

**FRESNO COUNTY ECONOMIC OPPORTUNITIES COMMISSION**

James C. Sanchez  
City Attorney

  
By: Deputy \_\_\_\_\_ Date \_\_\_\_\_

  
By: Rogel Palomino, Executive Director  
Fresno County Economic Opportunity  
Commission

**ATTEST:**

Rebecca E. Klish, City Clerk

By: \_\_\_\_\_  
Deputy \_\_\_\_\_ Date \_\_\_\_\_



## Fresno County Economic Opportunities Commission

**FOR IMMEDIATE RELEASE:**

June 16, 2008

**Media Contacts:**

Yahaira García-Perea  
Media/Public Relations Specialist  
Office 559.263.1024  
Cell 310.749.8578  
[Yahaira.Garcia-Perea@fresnoeoc.org](mailto:Yahaira.Garcia-Perea@fresnoeoc.org)

### **EOC's Food Services to Provide 100,000 Summer Meals to Underprivileged Youth**

**(Fresno, CA)** - School is out for the summer and that means thousands of economically disadvantaged Fresno County children who rely on the free or reduced-price meals offered at school during the academic year may experience hunger. Fresno County Economic Opportunities Commission's (EOC) Food and Nutrition division is ready to fill the void by providing free meals to underprivileged youth via its Summer Food Services Program.

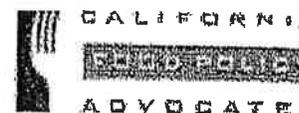
"Unfortunately, for some children, the only balanced meal they receive may be through school-provided breakfasts or lunches," says EOC Food Services Director Gary Joseph. "The Summer Food Services Program gives us the opportunity to continue providing those nutritious meals to children whose parents are unable to provide healthy meals and might otherwise go hungry during the summer break."

According to California Food Policy Advocates, 28.6% of Fresno County children live in poverty. Though 111,053 children are eligible to participate in the Summer Food Services Program, only 18,633 do.

The meals prepared and provided by EOC meet strict United States Department of Agriculture and California Department of Education nutrition guidelines. Meals are comprised of two ounces of protein, two servings of fruits/vegetables, one serving of bread, and eight ounces of milk.

EOC began administering the Summer Food Services Program in 1991 with only two sites. Now, 17 years later, the program has expanded to 64 sites, including 47 urban and 17 rural locations.

The Summer Food Service Program is a federal program funded by the USDA and administered by the California Department of Education.



## California Summer Food Facts

### What is the Summer Food Service Program?

The Summer Food Service Program (SFSP) is a federally funded child nutrition program that provides reimbursement to local organizations that furnish free, nutritious meals to low-income children during off-school periods ~~of the year~~ ~~more~~ when the National School Lunch and Breakfast Programs are not available. Originally, California's SFSP operated mainly during the summer, but now, as the number of year-round schools is increasing, many programs operate throughout the year.

### Why is Summer Food Important?

The SFSP is vital for many low-income children. Free school breakfasts and lunches provide these children with up to 75% of the Recommended Dietary Allowances for key nutrients. When school is not in session, these meals are lost and may not easily be replaced. As children obviously do not stop growing physically or cognitively because they are not in school, SFSP fills a crucial gap, helping to ensure that students will return to school ready to learn.

### Who is Eligible to Receive a Summer Meal?

Most SFSP meals are served at certified "open sites" in low-income neighborhoods. Any child age 18 or younger who comes to an open site is entitled to a free meal. A site qualifies as "open" if it is located in an area where half or more of the families in the area have an income at or less than 185% of the federal poverty line. This may be determined in a number of ways. The most common is by reference to the applications for free and reduced-price meals turned in to the local elementary school. Area income data from the appropriate census tract or block group may also be used.

Summer sites may also qualify for the program as an "enrolled" program. Such sites must also meet the 50% test, but only for those children enrolled in the food program. Every child who attends these sites may eat for free if he or she fills out the appropriate income application. In very rare circumstances, a site is approved to be "closed" to the community. This typically occurs when there is a threat of violence in the neighborhood from certain program participants.

### How Many Participate in the Program?

The SFSP is severely underutilized. There are approximately 2.8 million children in California eligible to receive free or reduced-price school lunch, in 2001 about 30% of them participated in the summer nutrition (SFSP and school lunch combined). Of the children receiving free and reduced priced lunches, just under 44% receive a lunch during the summer. The program is severely under utilized by older children and children in rural areas.

Many counties in California don't serve summer meals despite a high need for them. In 2000, 16 of 58 counties did not have a single summer food site. There are almost 13,000 children in these counties alone who rely on free or reduced-price meals during the school year, but are left to fend for themselves during the summer.

### Who Administers the Program?

SFSP sites may be operated by any of the following organizations: public or private nonprofit schools; agencies of local, municipal, county, tribal or state government; residential camps; National Youth Sports Programs; and private

nonprofit organizations. The Summer Food office of the Child Nutrition Food Distribution Division of California's Department of Education oversees the program's operation.

**Isn't there a new waiver that helps schools serve summer meals without having to operate the traditional Summer Food Program?**

Yes. Schools can now request a waiver to operate sites that feed children who are not in school under National School Lunch Program rules and guidelines. By doing so, schools have less paperwork and monitoring requirements, allowing schools the opportunity to take on new sites and stay open all summer long. Call CFPA to get information on the Seamless Waiver 415.777.4422 ext.108.

**Whom Do I Contact to Get Started?**

*For an application call or more information:* CDE Nutrition Services Division: (800) 333 5427 or call CFPA 415.777.4422 ext. 108.