

AGREEMENT
Between
CLOVIS UNIFIED SCHOOL DISTRICT
And the
CITY OF
FRESNO

Weldon Elementary
ASES
2013-2014

GENERAL INFORMATION

CUSD:

CUSD Department: After School Programs
Program: ASES
Contact Person: Michele Niehoff

Contractor:

Contractor: City of Fresno
Contractor Department/Address: PARCS Department
848 M Street
Fresno, CA 93721
Contractor's Contact Person: Manuel I. Hernandez
(559)621-6621
Contractor's Taxpayer Identification Number or
SSN: 94-6000338
Program Provider: Weldon Elementary
ASES

District: Clovis Unified School District
School Site/Address: Weldon Elementary
150 DeWitt Avenue
Clovis, CA 93612

This Independent Contractor Agreement ("Agreement") is made and entered into this 16th day of October 2013, by and between ASES in Clovis Unified School District ("CUSD"), and the City of Fresno, a municipal corporation ("CONTRACTOR"). CUSD and CONTRACTOR are sometimes referred to as Party and collectively as Parties.

1. CONTRACTOR Services. CONTRACTOR agrees to provide staff members to facilitate the science program curriculum. The curriculum includes (45) sessions of life science, earth science and physical science, located at Clovis Unified School District 's Weldon Elementary school and one (1) field trip to the Exploratorium . The parties anticipate that CONTRACTOR will provide these services 45 days at 6 hours per day.

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 (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 CUSD 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 CUSD 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 CUSD a list of names of its employees who may come in contact with students.
 - b. TB Clearance. CONTRACTOR expressly acknowledges and certifies that pursuant to Education Code section 49406 all employees that shall come into contact with students has submitted to an examination within the last 60 days to determine that he/she is free of active tuberculosis, or has on file, such determination that is still current and not expired.
3. Term. This Agreement shall begin on October 16, 2013, and shall terminate on April 10, 2014. There shall be no extension of the term of the agreement without a written agreement signed by both parties.
4. Compensation. CUSD shall pay CONTRACTOR a maximum of Twelve Thousand Five Hundred Ninety Five Dollars and 00/100s (\$12,595.00) for all services and materials provided under the terms of this Agreement. Such compensation includes the following [(max compensation amount listed in paragraph 4a) + (amount listed in paragraph 4b) + (amount listed in paragraph 4c)]
CUSD agrees to pay CONTRACTOR within thirty (30) days of receipt of invoice.
 21. Maximum payment to CONTRACTOR for Leader services shall not exceed Four Thousand Five Hundred Fifty Dollars and 00/100s (\$4,550.00).
 - b. Payment to the CONTRACTOR of Six Thousand Nine Hundred Dollars and 00/100s (\$6,900.00) for the cost of materials, supplies, and deliverables related to CONTRACTOR'S performance of services under the terms of this Agreement.
 - c. Payment to the CONTRACTOR of 10% of the sum of paragraphs 4a and 4b in the amount of One Thousand One Hundred Forty Five Dollars and 00/100s (\$1,145.00) 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 CUSD 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. CUSD may then proceed with the work in any manner CUSD deems proper.
7. Indemnification. CONTRACTOR shall indemnify, hold harmless and defend CUSD 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 CUSD, 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 have arisen directly or indirectly from the negligent or intentional acts or omissions, or willful misconduct of CONTRACTOR or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement.

CUSD 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, CUSD 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 CUSD 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 CUSD 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.

8. Insurance. It is understood and agreed that CONTRACTOR and CUSD 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.

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 CUSD.

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 CUSD or to any employment or fringe benefits from CUSD. Payments to the CONTRACTOR pursuant to this Agreement will be reported to Federal and State taxing authorities as required. CUSD will not withhold any money from compensation payable to CONTRACTOR. In particular, CUSD 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 CUSD.

13. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the CONTRACTOR and CUSD 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:

CUSD:
Clovis Unified School District
After School Program
Attention: Michael Johnston
Assistant Superintendent of Business
1735 David E. Cook Way
Clovis, CA 93611

CONTRACTOR:
City of Fresno
PARCS Department
Attention: Bruce A. Rudd
City Manager
848 M Street
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.

[SIGNATURES ON FOLLOWING PAGE]

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

ASES

Clovis Unified School District

By: 
Michael Johnston
Assistant Superintendent of Business

REVIEWED BY:

 11-5-13
Michele Niehoff
Site Coordinator
Clovis Unified School District

CONTRACTOR

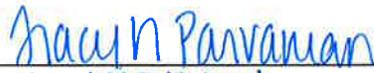
City of Fresno
Parks, After School Recreation and Community
Services Department

By: 
Bruce A. Rudd
City Manager

ATTEST:
Yvonne Spence
Clerk, City of Fresno

By:  12/12/2013
Deputy
Date

APPROVED TO AS FORM:
Douglas T. Sloan
Fresno City Attorney

By:  11-20-13
TRACY PARVAVIAN
Deputy
Date

