CITY OF FRESNO
City Clerk's Office (Original)

AGREEMENT
Between
FORKNER ELEMENTARY
And the
CITY OF FRESNO

Forkner Elementary
2011-2012

GENERAL INFORMATION

FUSD:	
FUSD Department:	Forkner Elementary
Program:	Parent Teacher Association
Contact Person:	Kay Davies
Contractor:	
Contractor:	City of Fresno
Contractor Department/Address:	Fresno City Parks and Recreation 1515 Divisadero St. Fresno, CA 93721
Contractor's Contact Person:	Bruce A. Rudd
Contractor's Taxpayer Identification Number or SSN:	94-6000338
Program Provider:	
	Forkner Elementary Parent Teacher Association
District:	Fresno Unified School District
School Site/Address:	Forkner Elementary 7120 N. Valentine Fresno, CA 93711

This Agreement is made and entered into this 20th day of January 2012, by and between Parent Teacher Association in Fresno Unified School District (hereinafter referred to as "FUSD"), 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: forty-six (46) science sessions and one Family Science Night located at Fresno Unified School District's Forkner Elementary School.

Leader shall be responsible for providing the above services for each school day (46) of the Informal Science Program which is operated at the site from approximately 8 a.m. to 2 p.m. A school day of service shall consist of six (6) hours. The program shall consist of a maximum of forty-seven (47) days. The After School Program operates according to the school site's calendar, which begins on August 22, 2011 and concludes June 15, 2012.

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 PTA 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 PTA 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 PTA 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 January 20, 2012, and shall terminate on June. There shall be no extension of the term of the agreement without a written agreement signed by both parties.

4. Compensation. Parent Teacher Association shall pay CONTRACTOR a maximum of Eight Thousand One Hundred Eighty Four Dollars and 00/100s ($8,184.00) 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)] Parent Teacher Association agrees to pay Contractor within thirty (30) days of receipt of invoice.

   a. Maximum payment to CONTRACTOR for Leader services shall not exceed Five Thousand One Hundred Forty Dollars and 00/100s ($5,140.00).

   b. Payment to the CONTRACTOR of Two Thousand Two Hundred Twenty Five Dollars and 00/100s ($2,225.00) 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 Seven Hundred Forty Four Dollars and 00/100s ($744.00) 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 Parent Teacher Association 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. PTA may then proceed with the work in any manner PTA deems proper.

7. Indemnity. The CONTRACTOR shall indemnify, hold harmless, and defend PTA 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 PTA, 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.

   PTA 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, PTA, 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 PTA 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 PTA 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 PTA 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 authorized volunteers. 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 PTA.

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

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

FUSD:
Fresno Unified School District
Parent Teacher Association
Attention: Kay Davies
Principal, Forkner Elementary
Forkner Elementary
7120 N. Valentine
Fresno, CA 93711

CONTRACTOR:
Fresno City Parks and Recreation Department
Attention: Bruce A. Rudd
Assistant City Manager
1515 Divisadero St.
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.

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

PARENT TEACHER ASSOCIATION
Fresno Unified School

Rhonda Beck

Rhonda Beck, PTA President
Forkner Elementary

REVIEWED BY:

Kay Davies

Kay Davies, Principal
Forkner Elementary

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

Acting PARCS
[signature], Director

Bruce A. Rudd
Assistant City Manager , Fresno PARCS

ATTEST:
REBECCA KLISCH
Clerk, City of Fresno

Sherrie L. Badertscher
Deputy
1/4/12

APPROVED TO AS FORM:
Fresno City Attorney

[signature]

Talia Kolluri-Barbick
Deputy City Attorney

Date: 12/20/11

RESOLUTION NO. 2011-212

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, AUTHORIZING THE DIRECTOR OF THE PARKS, AFTER SCHOOL, RECREATION AND COMMUNITY SERVICES DEPARTMENT OR DESIGNEE TO ENTER INTO CONTRACTS TO PROVIDE AFTER SCHOOL PROGRAMS

WHEREAS, the City routinely enters into contracts to provide after school programming to various educational institutions, including Fresno Unified, Clovis Unified, Central Unified, and the Fresno County Office of Education (collectively, "School Districts"); and

WHEREAS, these programs include the Community Science, Life & Environmental Sciences, Business Education Service Training (BEST), and Elementary After School Recreation; and

WHEREAS, each contract is program and site specific, and the City is compensated for providing these programs and services; and

WHEREAS, due to the budget process of the School Districts, a District often does not know until the last minute if it is able to fund a particular program at a particular site, and due to scheduled City Council recesses and holidays, it is sometimes impossible to secure council approval of a contract before the program is scheduled to commence; and

WHEREAS, authorizing the Director of the Parks, After-school, Recreation and Community Services Department ("Director") or his designee to enter into such contracts will assure that services are provided subject to a valid and enforceable contract, and will increase efficiency.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno as follows:

1. Each year prior to September 30, the Director or designee will provide a report to council that includes the number and amounts of contracts between the City and the School Districts for the previous year,

2. The Director shall be authorized to enter into contracts with School Districts for after school programs, so long as the total value of those contracts does not exceed ten percent (10%) of the current fiscal year Amended Budget appropriations.

3. All contracts will be subject to approval as to form by the City Attorney's Office and the City's Risk Manager.

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Adopted _____
Approved 10-2011
Effective _____

2011-212

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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, at a regular meeting held on the 20th day of October, 2011.

AYES : Baines, Borgeas, Olivier, Quintero, Westerlund, Brand
NOES : None
ABSENT: Xiong
ABSTAIN: None

Mayor Approval: N/A, 2011

Mayor Approval/No Return: N/A, 2011

Mayor Veto: N/A, 2011

Council Override Vote: N/A, 2011

REBECCA E. KLISCH
City Clerk

By: Rebecca E. Klisch
~~Deputy~~

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

By: _____
Katherine B. Doerr, Deputy