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11/7/2013

**GRANT AGREEMENT
CITY OF FRESNO, CALIFORNIA
AND THE VICTIM OFFENDER RECONCILIATION PROGRAM OF THE CENTRAL VALLEY AND
AND THE FRESNO COUNTY SUPERINTENDENT OF SCHOOLS**

CITY OF FRESNO
City Clerk's Office (Original)

THIS AGREEMENT is made and entered into effective the 21st day of August, 2013, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and FRESNO PACIFIC UNIVERSITY, a California nonprofit corporation (hereinafter referred to as "Fresno Pacific"), and THE FRESNO COUNTY SUPERINTENDENT OF SCHOOLS (hereinafter referred to as "FCSS")

RECITALS

WHEREAS, the CITY submitted an application to Board State and Community Corrections (BSCC), for \$12,000 in grant funds through the 2012/14 California Gang Reduction, Intervention and Prevention ("CalGRIP") Program for Cities funded by the CalGRIP Initiative (the "Program"), including the Cost Breakdown which is attached hereto as **Exhibit A** and incorporated by reference herein; and

WHEREAS, the Program is intended to fund gang prevention, intervention, reentry, education, job training, skills development, family and community services, outreach, community engagement and suppression activities; and

WHEREAS, upon award of grant funds and entry by City into a grant agreement with the State of California that may be subject to modification consistent with the Program (the "Grant Agreement"), the City intends through its Police Department ("FPD") to work with FRESNO PACIFIC for the purpose of bringing together students and staff at FCSS's Kermit Koontz Education Complex ("KKEC") to reduce conflict, prevent arrests, and encourage and provide an opportunity for peacemaking (healing, restoration, forgiveness and reconciliation); and

WHEREAS, the City and FRESNO PACIFIC believe that implementation of restorative justice practices through the Victim Offender Reconciliation Program ("VORP") before further legal and/or political action may be needed will empower the students and staff at the FCSS's KKEC to manage their own conflicts; and

WHEREAS, performance of the services by FRESNO PACIFIC will be to benefit the CITY, KKEC, and in the public interest.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals, which are contractual in nature, the mutual covenants contained herein, and subject to the terms, conditions and provisions of the structured mediation activities described in **Exhibit B** of this AGREEMENT, the parties mutually agree as follows:

1. PARTICIPATING AGENCIES AND DESIGNATED CONTACT PERSONS

CITY:

Fresno Police Department
Lieutenant David Newton
Community Services Bureau
2326 Fresno St
Fresno, CA 93721

FRESNO PACIFIC UNIVERSITY:

Center for Peacemaking and Conflict Studies
at Fresno Pacific University
Duane Ruth-Heffelbower, Esq.
Program Manager
1717 S. Chestnut Ave.
Fresno, CA 93702

FCSS:

Fresno County Superintendent of Schools
c/o Fresno County Office of Education
Nick Hustedde
Program Manager/Principal
Kermit Koontz Education Complex
1320 N. Mariposa
Fresno, CA 93703

2. ROLES AND RESPONSIBILITIES

- A. FPD, acting as City representative, subject to all applicable constitutional and local law requirements, shall:
1. Act as the lead agency in supervising the activities of the mediation services in the CalGRIP 2012/14 grant award, which is incorporated herein by reference;
 2. Meet once per month, or as needed, with FRESNO PACIFIC and FCSS/KKEC to discuss mediation activities, coordination, implementation, program issues, resolution of problems, timetables, and performance measurements;
 3. Provide an addendum to FRESNO PACIFIC of itemized funding source(s), objectives, and award(s) specific to the infrastructure of the mediation activities if and when additional funding is secured by City for mediation activities; and
 4. Monitor the oversight, disbursement, and reimbursement of grant funding, and monitor progress reporting data performed by Mayors Gang Prevention Initiative.
- B. FRESNO PACIFIC, shall provide a structured mediation program and associated services ("Services") during the term of this AGREEMENT. In this regard, FRESNO PACIFIC shall act as the direct provider of Services, and shall:
1. Provide direct Services to FCSS/KKEC students identified to be in need of mediation services.
 2. Provide a certified mediator, trained in restorative justice / conflict resolution techniques, with an appropriate level of experience as agreed upon by the City and FCSS;
 3. Provide mediation services to KKEC youth and staff, implementing restorative justice practices to train students and staff at KKEC to manage their own conflicts;
 4. Obtain written consent from the parent or legal guardian of each student participating in the mediation services prior to providing any mediation services to KKEC students;
 5. Meet once per month, or as needed, with FPD and KKEC staff to discuss mediation coordination, implementation, program issues, resolution of problems, timetables, and performance measurements;
 6. Obtain, complete, and submit to FCSS a Fingerprinting and Criminal Background Check Certification for each of its employees to the satisfaction of FCSS before FRESNO PACIFIC commences any Services under this Agreement at FCSS or KKEC;

7. Obtain, complete, and submit to FCSS a Tuberculosis Certification for each of its employees to the satisfaction of FCSS before FRESNO PACIFIC commences any Services under this Agreement at FCSS or KKEC.
8. Have direct oversight of mediation activities at the KKEC;
9. Collect all student information in providing the mediation/restorative justice services under this AGREEMENT, and maintain the confidentiality of confidential education documents and information of FCSS/KKEC by safeguarding such information at KKEC in a secured location. Confidential student documents and information must not be shared with FPD, the City or any other outside agency. The personally identifiable student information collected by FRESNO PACIFIC in providing the Services under this AGREEMENT is for the sole educational use of FCSS/KKEC.

C. FCSS/KKEC shall:

1. Provide project-required facilities and supportive services for FRESNO PACIFIC;
2. Meet once per month, or as needed, with FPD and FRESNO PACIFIC staff to discuss mediation coordination, implementation, program issues, resolution of problems, timetables, and performance measurements;
3. Provide parking space, desk, internet and telephone for FRESNO PACIFIC staff at the KKEC;
4. Provide access to a private room allowing mediation services at KKEC;
5. Provide de-identified student information to FRESNO PACIFIC, FPD, and/or City solely for the purpose of education research and evaluation with the purpose of improving student conduct at KKEC as set forth below in section 6 of this AGREEMENT.

3. REIMBURSEMENT FOR PROGRAM ACTIVITIES

- FRESNO PACIFIC will implement mediation/restorative justice practices at the FCSS's KKEC, on all scheduled school days, from 0800-1600 hours. At least one FRESNO PACIFIC counselor will be present on the school property during scheduled school days, or as determined by FRESNO PACIFIC and KKEC, for no less than eight hours per school day.

For the aforementioned services, the City agrees to reimburse FRESNO PACIFIC solely from allocated and available Program grant funds for eligible costs incurred by FRESNO PACIFIC pursuant to this Agreement in an amount not to exceed \$12,000 in accordance with the Cost Breakdown attached as **Exhibit A**.

Payment shall be contingent on City's receipt of an undisputed invoice, together with any reports and substantiation materials required by the City.

If FRESNO PACIFIC should fail to comply with any provision of the AGREEMENT, the City shall be relieved of its obligation to render any further compensation.

Payment shall be contingent upon receipt and appropriation by City of grant funding. Nothing in this AGREEMENT shall commit the taxing authority or general fund of the City.

In the event that FRESNO PACIFIC directly obtains additional funding for mediation-related services, FRESNO PACIFIC shall utilize said funding in conjunction with its terms, including any reimbursement to City for staffing services.

In the event that City directly obtains additional funding for mediation services (i.e., through CalGRIP or another program), City shall utilize said funding in conjunction with the terms of this Agreement, including any reimbursement to FRESNO PACIFIC for staffing services.

4. AGREEMENT EFFECTIVENESS, TERM AND TERMINATION

The effectiveness of this AGREEMENT is contingent upon City receiving the Program grant award and City's continuation of the Mayor's Gang Prevention Initiative program and mediation services. The parties shall be committed to the Program for the balance of the entire funding cycle commencing August 1, 2013 and ending December 31, 2014. FRESNO PACIFIC acknowledges and agrees that funding through the life of the grant is dependent upon satisfactory performance by FRESNO PACIFIC, availability of funds, and continuation by City of the Mayor's Gang Prevention Initiative program and mediation services.

Subject to the foregoing, the term of the AGREEMENT shall begin August 1, 2013 and shall end on December 31, 2014. Unless terminated during the term of the AGREEMENT in accordance with this section below, the AGREEMENT shall terminate at 12:00 midnight on December 31, 2014 without any notice or action by any party.

Notwithstanding the foregoing, this AGREEMENT shall automatically suspend or terminate upon City's written notice to FRESNO PACIFIC after the happening of any of the following events: (i) termination of the Program, grant, Mayor's Gang Prevention Initiative program; (ii) any non-appropriation or non-allocation of grant funding required in pursuit hereof; (iii) FRESNO PACIFIC's illegal or improper use of funds, (iv) FRESNO PACIFIC's failure to comply with any term of this AGREEMENT; or (v) FRESNO PACIFIC's submittal of any substantially incorrect or incomplete itemized invoice required for reimbursement.

FRESNO PACIFIC may terminate this AGREEMENT upon thirty (30) days' written notice to both City and FCSS upon the happening of any of the following events: (i) insufficient funding secured by FRESNO PACIFIC which renders FRESNO PACIFIC unable to provide mediation services and/or structured youth activities; (ii) City's non-compliance with any term of this AGREEMENT; or (iii) FCSS's non-compliance with any term of this AGREEMENT.

FCSS, with or without cause, may terminate the AGREEMENT by giving City and FRESNO PACIFIC thirty (30) days' written notice.

5. TARGET POPULATION

The students attending the FCSS's KKEC, located within the City of Fresno.

6. OBJECTIVE AND PERFORMANCE DATA

The objective of this Program is to improve student conduct at KKEC and reduce the number of conflicts between students, and between students and staff. FCSS/KKEC and/or FRESNO PACIFIC, under the direction of FCSS/KKEC, shall report the following de-identified student data to FPD within thirty (30) days following the end of each academic semester during the term of this Agreement:

1. Total number of mediations conducted by FRESNO PACIFIC at KKEC
2. Total number of criminal cases filed relating to conduct at KKEC
3. Total number of citations issued relating to conduct at KKEC
4. Total number of physical arrests relating to conduct at KKEC
5. Mediated student school attendance status pre/post mediation
6. Mediated student academic performance pre/post mediation (quarterly)
7. Mediated student behavior development (# visits to staff office, # suspensions)
8. Number of students enrolled at KKEC

FCSS/KKEC and/or FRESNO PACIFIC, under the direction of FCSS/KKEC, shall provide de-identified information in the above categories to FPD as required by the City during the term of this AGREEMENT.

All student information collected, tracked, and/or shared pursuant to this AGREEMENT must be de-identified in compliance with applicable legal requirements. Specifically, FCSS shall not release, or authorize FRESNO PACIFIC to release, any personally identifiable data to FPD or the City (such as student names, birthdates, social security numbers, or school-assigned student IDs). Prior to releasing any de-identified student data to FPD or the City, FCSS (or FRESNO PACIFIC at FCSS's direction) shall first generate and assign random study IDs to students' data. The study IDs shall be generated and assigned randomly by FCSS, and neither FCSS nor FRESNO PACIFIC shall release any information to FPD, or the City about how FCSS randomly generates and assigns study IDs or information that would allow FRESNO PACIFIC, FPD, or the City to identify students based on study IDs. The study IDs shall not be used for any purpose other than identifying a de-identified record for purposes of educational research, and such study IDs shall not be used to ascertain personally identifiable information about a student. The study IDs shall not be based on student social security numbers, school-assigned IDs, or other personal information. Prior to FCSS or FRESNO PACIFIC releasing any de-identified information to FPD, or the City, FCSS must review the de-identified data and make a reasonable determination that the de-identified data does not personally identify any student.

FPD and the City may not collect, track or retain any personally identifiable KKEC student information. All personally identifiable student data collected and tracked must be done in the manner as set forth herein. Any personally identifiable student information relating to the mediation/restorative justice services under this AGREEMENT must not leave the FCSS/KKEC campus, and any such information in the possession of FRESNO PACIFIC, FPD, or the City must immediately be turned over to FCSS/KKEC.

7. RESOURCES

FPD will provide:

- A School Resource Officer assigned fulltime to KKEC to provide assistance to the FRESNO PACIFIC counselors and ensure full implementation of restorative justice techniques.

FRESNO PACIFIC will provide:

- An on-site counselor at the KKEC during scheduled school days from 0800-1600 hours, or as determined by FRESNO PACIFIC and KKEC, for no less than eight hours per school day.

FCSS will provide:

- Parking, a desk, and telephone for FRESNO PACIFIC staff at KKEC; and
- Access to a private room allowing mediation services.

8. FINANCIAL REPORTING, AUDITING AND DOCUMENT RETENTION

FRESNO PACIFIC shall submit a monthly bill to FPD for the eligible counselor mediation services to KKEC students.

FRESNO PACIFIC shall maintain accurate, complete, orderly and separate records for the mediation services. Records of FRESNO PACIFIC expenses pertaining to the mediation services shall be kept on a generally recognized accounting basis. All records that do not contain confidential student information or student identities shall be available to City, BSCC, FCSS or any of their authorized representatives upon request during regular business hours throughout the life of this AGREEMENT and for a period of three years after final payment or, if longer, for any period required by law or the grant Program. In addition, all books, documents, papers, and records of FRESNO PACIFIC pertaining

to the mediation services and structured youth activities shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. This paragraph shall survive expiration or termination of this AGREEMENT.

9. COMPLIANCE WITH GOVERNING LAW AND GRANT

FRESNO PACIFIC shall at all times comply with all applicable laws of the United States (including, but not limited to, HIPAA), the State of California, the City, FCSS, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this AGREEMENT. FRESNO PACIFIC acknowledges receipt of a copy of the grant and agrees to comply with all applicable provisions thereof and cooperate with City in meeting the requirements there under.

Applicable costs and expenditures must be allowable in accordance with OMB Circular A-87, *Cost principles for state, local and Indian Tribal Governments*. Grant funds are subject to the Single Audit Act Amendments of 1996 and the OMB Circular, A-133, *Audits of states, local governments and non-profit organizations*.

The Services provided by FRESNO PACIFIC under this AGREEMENT are over and above FRESNO PACIFIC's current budgeted positions. The parties agree that Grant funds shall not be used to replace funds of, or positions otherwise funded by, FRESNO PACIFIC.

By signing this AGREEMENT, FRESNO PACIFIC certifies under penalty of perjury under the laws of the State of California that (i) FRESNO PACIFIC will comply with the Drug-Free Workplace Act of 1990 (California Government Code sections 8350-8357); and (ii) FRESNO PACIFIC is not listed on any federal or state list of individuals or organizations debarred from receiving a contract or grant, or having its contract or grant cancelled due to failure to comply with respective contract or grant provisions. FRESNO PACIFIC shall complete and submit to City and FCSS all applicable forms required by the grant.

10. CAPACITY OF AGENCY AND FRESNO PACIFIC

In the furnishing of the Services provided for herein, FRESNO PACIFIC is acting solely as an independent contractor. Neither FRESNO PACIFIC, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venture, partner or associate of the City or FCSS for any purpose. The City and FCSS shall have no right to control or supervise or direct the manner or method by which FRESNO PACIFIC shall perform its work and functions. However, the City and FCSS shall retain the right to administer this AGREEMENT so as to verify that FRESNO PACIFIC is performing its obligations in accordance with the terms and conditions thereof.

This AGREEMENT does not evidence a partnership or joint venture between FRESNO PACIFIC, the City, and FCSS. FRESNO PACIFIC shall have no authority to bind the City or FCSS absent the express written consent of the City or FCSS, as applicable. Except to the extent otherwise provided in this AGREEMENT, FRESNO PACIFIC shall bear its own costs and expenses.

Because of its status as an independent contractor, FRESNO PACIFIC and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to City or FCSS employees. FRESNO PACIFIC 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, FRESNO PACIFIC shall be solely responsible, shall indemnify, defend and save City and FCSS harmless from all matters relating to employment and tax withholding for and payment of FRESNO PACIFIC'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 or FCSS employment benefits, entitlements, programs and/or funds offered employees of City and FCSS 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, FRESNO PACIFIC may be providing services to others unrelated to this AGREEMENT.

11. INSURANCE

Throughout the life of this Agreement, FRESNO PACIFIC shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company (ies) either: (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A- VI" in Best's Insurance Rating Guide, or (ii) authorized in writing by City's and FCSS's Risk Management Division. The following policies of insurance are required:

- (i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as Insurance Services Office (ISO) form CG 00 01 and shall include insurance for "bodily injury", "property damage" and "personal and advertising injury", including premises and operation, products and completed operations and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate for bodily injury and property damage, \$1,000,000 per occurrence for personal and advertising injury and \$2,000,000 aggregate for products and completed operations.
- (ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) form CA 00 01 and shall include coverage for "any auto" with limits of liability of not less than \$1,000,000 per accident for bodily and property damage.
- (iii) WORKERS' COMPENSATION insurance as required under the California Labor Code.
- (iv) EMPLOYERS' LIABILITY insurance (if FRESNO PACIFIC has employee(s) or at such time as he/she employs such person(s) during the life of this Agreement) with minimum limits of \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

Defense costs shall be provided as an additional benefit and are not included within the above limits of liability. FRESNO PACIFIC shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and FRESNO PACIFIC shall also be responsible for payment of any self-insured retentions.

The above described policies of insurance shall be endorsed to provide an unrestricted 30 calendar day written notice in favor of City and FCSS of policy cancellation of coverage, except for the Workers' Compensation policy, which shall provide a ten (10) calendar day written notice of such cancellation of coverage. In the event any policies are due to expire during the term of this Agreement, FRESNO PACIFIC shall provide a new certificate evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy(ies). Upon issuance by the insurer, broker, or agent of a notice of cancellation in coverage, FRESNO PACIFIC shall file with City and FCSS a new certificate and all applicable endorsements for such policy(ies).

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name City and FCSS and each of their officers, officials, agents, employees and volunteers

as an additional insured. Such policy(ies) of insurance shall be endorsed so FRESNO PACIFIC's insurance shall be primary and no contribution shall be required of City and FCSS. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City and FCSS and each of their officers, officials, employees, agents and volunteers. FRESNO PACIFIC shall have furnished City and FCSS with the certificate(s) and applicable endorsements for ALL required insurance prior to City and FCSS execution of the Agreement. FRESNO PACIFIC shall furnish City and FCSS with copies of the actual policies upon the request of City and FCSS Risk Manager and this requirement shall survive termination or expiration of this Agreement.

The fact that insurance is obtained by FRESNO PACIFIC shall not be deemed to release or diminish the liability of FRESNO PACIFIC, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City and FCSS shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the AGREEMENT of indemnification to be provided by FRESNO PACIFIC. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of FRESNO PACIFIC, its officers, officials, employees, agents, persons under the supervision of FRESNO PACIFIC, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

If at any time during the life of the Agreement or any extension, FRESNO PACIFIC fails to maintain the required insurance in full force and effect, all work under this Agreement shall be discontinued immediately, and all payments due or that become due to FRESNO PACIFIC shall be withheld until notice is received by City and FCSS that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City and FCSS to terminate this Agreement.

If FRESNO PACIFIC should subcontract all or any portion of the services to be performed under this Agreement, FRESNO PACIFIC shall require each subcontractor to provide insurance protection in favor of City and FCSS and each of their officers, officials, employees, agents and volunteers in accordance with the terms of each of the preceding paragraphs, except that the subcontractors' certificates and endorsements shall be on file with FRESNO PACIFIC, City and FCSS prior to the commencement of any work by the subcontractor.

It is understood and agreed that City and FCSS maintain insurance policies or self-insurance programs to fund their respective liabilities under this AGREEMENT similar to those required of FRESNO PACIFIC.

12. INDEMNIFICATION

Each Party's indemnity, defense, and hold harmless obligations to another Party under this AGREEMENT are as follows: (A) a Party ("**Indemnitor**") shall indemnify and hold harmless another Party ("**Indemnitee**") to the full extent permitted by California laws for any Loss (excluding attorney's fees and litigation costs that the Indemnitee or a Third Party incurred or paid related to the Loss) sustained by the Indemnitee or a Third Party only in proportion to the Indemnitor's liability based on the determination of a governmental entity with jurisdiction to make such a determination or a court of competent jurisdiction, whichever determination is final; and (B) each Party shall defend and pay for all of its attorney's fees and litigation costs related to any Claim or Loss without any right to indemnity and/or hold harmless of such fees and costs, or any right to defense, from the other Party. A Party who intends to seek or seeks indemnity and/or hold harmless of any Loss from the other Party: (1) shall notify the other Party in writing and within a reasonable time after the Party knows or becomes aware of any Claim that may or will result in a Loss, describing, if known or determinable, the pertinent circumstances, all entities and persons involved, and the amount being claimed; and (2) shall not settle or otherwise resolve the Claim until it has notified the other Party of the Claim in accordance with the

preceding provision (1) and given the other Party written notice and an opportunity to participate in and to consent to the settlement or resolution of the Claim, which consent the other Party shall not unreasonably withhold. A Party's obligations under this Article are not limited to or by any insurance that it maintains or the lack of insurance but apply to the full extent permitted by California laws. "**Claim**" means any claims, demands, lawsuits, causes of action, actions, cross-complaints, cross-actions, and/or proceedings arising out of, resulting from, or related to this Agreement where there has been no final determination of liability by a governmental entity with jurisdiction to make such a determination or a court of competent jurisdiction. "**Loss**" means any bodily injury, property damage, personal injury, advertising injury, liability, loss, judgment, expense, and/or cost arising out of, resulting from, or relating to this Agreement and for which there has been a final determination by a governmental entity with jurisdiction to make such a determination or a court of competent jurisdiction that a Party is or both Parties are liable. "**Third Party**" means a person who or an entity that is not a Party to this Agreement and is not employed by, contracted with, whether directly or through a subcontract of any level, or otherwise retained by a Party to act for or on the Party's behalf. The provisions of this Article shall survive the termination of this Agreement.

13. PRECEDENCE OF DOCUMENTS

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

14. NOTICES

Any notice required or intended to be given to either party under the terms of this AGREEMENT 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 AGREEMENT or at such other address as the parties may from time to time designate by written notice.

15. BINDING

Subject to Section 17 below, once this AGREEMENT is signed by 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.

16. ASSIGNMENT

There shall be no assignment by either party of its rights or obligations under this AGREEMENT 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.

17. WAIVER

The waiver by any party of a breach by any other party of any provision of this AGREEMENT shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this AGREEMENT. No provisions of this AGREEMENT may be waived unless in writing and approved by and signed by all parties to this AGREEMENT. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

18. GOVERNING LAW AND VENUE

This AGREEMENT shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this AGREEMENT and any rights and duties hereunder shall be Fresno County, California.

19. HEADINGS

The section headings in this AGREEMENT 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 AGREEMENT.

20. SEVERABILITY

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

21. INTERPRETATION

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

22. CUMULATIVE REMEDIES

No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

23. NO THIRD PARTY BENEFICIARIES

The rights, interests, duties and obligations defined within this AGREEMENT are intended for the specific parties hereto as identified in the preamble of this AGREEMENT. Notwithstanding anything stated to the contrary in this AGREEMENT, it is not intended that any rights or interests in this AGREEMENT benefit or flow to the interest of any third parties.

24. ENTIRE AGREEMENT

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

THIS AGREEMENT IS SUBJECT TO RATIFICATION BY CITY COUNCIL ACTION.

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IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO,
a California municipal corporation

FRESNO COUNTY SUPERINTEDENT OF SCHOOLS,

By: 
JERRY DYER, Chief of Police

By: _____
JIM YOVINO, Superintendent of Schools

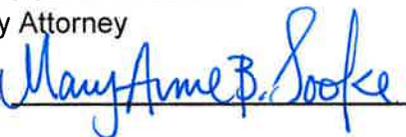
FRESNO PACIFIC UNIVERSITY
a California non-profit corporation

By: _____
DUANE RUTH-HEFFELBOWER, Program Manager

ATTEST:
YVONNE SPENCE, CMC
City Clerk

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By:  /8/13
Date

By:  Oct. 16, 2013
Date

Addresses:

CITY:
Fresno Police Department
Attention: Jerry Dyer
Chief of Police
2323 Mariposa Mall
Fresno, CA 93721

FRESNO PACIFIC:
Attention: Duane Ruth-Heffelbower, Esq.
Program Manager
1717 S. Chestnut Ave.
Fresno, CA 93702

Fresno County Superintendent of Schools:
Attention: Jim Yovino
Superintendent of Fresno County Schools
1111 Van Ness Avenue
Fresno, CA 93721

Attachment:
Exhibit A – Cost Breakdown
Exhibit B – VORP Policies and Protocols

MAT:prn [63106prn/agt] 10-16-13

Exhibit A

**Cost Breakdown of Victim Offender Reconciliation Program Services
to
The Fresno County Superintendent of Schools
(Effective August 1, 2013 and ending December 31, 2014)**

VORP Line Item Detail:

Staff on-site, available to offer services: \$8,000

Supervision of Staff: \$3,000

Data Tracking: \$ 1,000

Total maximum cost for the grant period \$12,000

Exhibit B

Fresno Pacific Policies and Protocols of Victim Offender Reconciliation Program ("VORP") at Kermit Koontz Education Center ("KKEC")

Guiding Values

- Safety for all members of the community
- Care, Restoration and Reintegration - for all hurt by crime
- Accountability – making and following up on agreements
- Trust – the result of making and keeping agreements
- Reconciliation – movement away from hate toward caring
- Peace - the result from right relationships
- Respectful relationships
- Addressing/Changing conditions that contribute to crime
- Family/Community/Government partnership
- Stakeholder cooperative decision-making
- School Authority and/or Criminal Justice backup when needed

Phase 1 Eligibility Criteria

At this stage of the pilot project, the minor/offender must meet the following eligibility criteria to participate in the VORP, subject to a further finding of suitability screening conducted by VORP¹.

The eligible misdemeanor cases are as follows:

1. All students who violate the respect agreement.
2. FPU staff will be responsible for identifying the number of students able to be accommodated in the program.

Violations cases that are determined to be eligible shall go to intake

Suitability Criteria

¹ References to "VORP" or "VORP staff" are to employees of Fresno Pacific University ("FPU").

1. Every student who is eligible will be accepted in the mediation process; the following suitability criteria are to be considered prior to case work beginning: The minor/offender must accept responsibility for the offense.
2. The minor/offender agrees to cooperate with the process.

Timeline of Community Justice Conference (“CJC”)

Step 1-

- This is the day that student that the minor is referred to the either the Thinkery or to speak with CPACS/FPU staff member.
 - The matter is scheduled for “Intake based upon student behavior, (violation of the respect agreement)

Step 2-

- Intake: The first available time.
 - The intake personnel:
 - Describe the Mediation Process.
 - Describe the voluntary nature of participating
 - Benefits of participating
 - Describe the role and necessary participation of family
 - Answer questions
 - Listen to their experience of the offense
 - Invite voluntary and constructive participation
 - Identify family members or other support who will be invited to participate
 - If eligible and minor/offender accepts responsibility, the minor/offender and their guardian are invited to sign Agreement to Participate Form.
 - Outline next steps

Step 3

- Assuming KKEC Procedural buy-in:
- Standard process for victim meeting in traditional case.
- Contact the victim to arrange an appointment for individual meeting. If they do not agree to meet, make sure they have all the victim services’ information.
- Meet with victim(s) to:
 - Describe the Mediation/Restorative Justice (“RJ”) Process
 - Describe the voluntary nature of a RJ
 - Describe the role and necessary participation of minors/offenders family and victim support people.
 - Answer questions
 - Listen to their experience of the offense and its impact
 - Invite voluntary and constructive participation
 - Identify family members or other support who will be invited to participate
 - Outline next steps and timeframes
 - Assign to mediator or refer back to court

- Schedule joint VORP meeting
- Joint Meeting (Report with agreement, partial agreement, or other victim requests).
 - Each person given opportunity to describe their experience (focus on primary victim and offender) and to hear a summary. Recognize the injustices/violations and their impact.
 - Facilitate the creation of an agreement that restores equity as much as possible and creates a constructive future. The agreement should address the needs created by the offense; needs that lead to the offense, and is supportive of victim's rights and restitution and rehabilitation for the minor/offender.
 - If there is an agreement, write the agreement and have it signed by all parties. Include follow-up meeting. Report and agreement are sent either to the Court or to Probation for the final disposition.
 - If there is no agreement or partial agreement the case is similarly sent to school authority.

Follow-up Meeting Scheduled

- Follow-up:
 - As per the individual agreements, follow-ups will be done by the FPU employee at KKEC.
 - Facilitate modification of an agreement that most appropriately considers the following goals:
 - proper restitution for the victim;
 - supportive of victim's and family needs;
 - Rehabilitative for minor/offender.

Confidentiality

Communication is a key component of the mediation process. It is the hope of the process that all participants will openly discuss issues involved with the identified violation(s). All content disclosed will be confidential unless otherwise agreed upon.

Victims Rights

Victims are to be afforded all rights as enumerated in section 28(b) of article I of the California Constitution. Particularly, to be treated with fairness and respect for his or her privacy and dignity and to be free from intimidation, harassment and abuse throughout the criminal or juvenile justice process.

Amendments

At the discretion of Principal Nick Hustedde and Director Tim Nightingale, amendments to these procedures can be explored and made.