

12/20/2012

**GRANT AGREEMENT
CITY OF FRESNO, CALIFORNIA
AND FRESNO CHIEF'S FOUNDATION**

THIS AGREEMENT is made and entered into effective the 1st day of January, 2013, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and FRESNO POLICE CHIEF'S FOUNDATION, a California nonprofit public benefit corporation (hereinafter referred to as "FPCF").

CITY OF FRESNO
City Clerk's Office (Original)

RECITALS

WHEREAS, the CITY'S submitted an application to Board State and Community Corrections (BSCC), for \$40,000, in grant funds through 2012/14 California Gang Reduction, Intervention and Prevention ("CalGRIP") Program for Cities funded by the CalGRIP Initiative – hereinafter referred to as the "Program," incorporated by reference herein; (the budget is described in **Exhibit A**) 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 ("Grant") with the State of California consistent with the Program, the City intends through its Police Department ("FPD") to work with FPCF for the purpose of providing structured activities in boxing and karate to youth of the City of Fresno, and teach positive values, acceptable behavior and responsible citizenship which Program and award documents are incorporated herein by reference; and

WHEREAS, the City and the FPCF believe that implementation of the Grant funded structured boxing and karate youth activities as described herein will further the above goals in the City of Fresno and to this end agree to coordinate and provide the services referenced herein; and

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

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals, which recitals are contractual in nature, the mutual covenants consideration as is hereby acknowledged, and subject to the terms and conditions and provisions of the structured boxing and karate youth activities and this AGREEMENT the parties mutually agree as follows:

1. PARTICIPATING AGENCIES AND DESIGNATED CONTACT PERSONS

City:
Fresno Police Department
Lieutenant David Newton
2326 Fresno St.
Fresno, CA. 93715

FPCF:
Fresno Police Chief's Foundation
Deputy Chief Keith Foster
2323 Mariposa Mall
Fresno, CA. 93715

2. ROLES AND RESPONSIBILITIES

FPD, acting as City representative, subject to all applicable constitutional and local law requirements, shall act as the lead agency in supervising the activities of contractors boxing and karate structured youth activities in the CalGRIP 2012/14 grant award incorporated herein by reference

1. City will meet at least once per month or as needed with FPCF to discuss boxing and karate structured youth activities coordination, implementation, programmatic issues, resolution of problems, timetables, and performance measurements;
2. As additional funding is secured by City for boxing and karate structured youth activities the City will provide an addendum to FPCF of itemized funding source, objectives and award specific to the infrastructure of the boxing and karate youth activities;
3. The City will house data collected by FPCF program coordinators to measure program effectiveness;
4. City will monitor grant funding oversight, disbursal and reimbursement and progress reporting data review performed by Mayors Gang Prevention Initiative

FPCF, acting as direct provider of boxing and karate youth activities, shall act as the lead agency in coordinating and implementing activities targeting City of Fresno at risk youth in need of a structured youth activity incorporated herein by reference.

1. FPCF will meet at least once per month or as needed with FPD/MGPI staff to discuss boxing and karate structured youth activities coordination, implementation, programmatic issues, resolution of problems, timetables, and performance measurements
2. Per this agreement, the city requires all FPCF volunteers, who work alone with youth in an activity sponsored by FPCF, to complete a Department of Justice (DOJ) and a Federal Bureau of Investigation (FBI) background check.
3. FPCF will have direct oversight of karate and boxing youth activities development and implementation in boundaries with significant gang violence ;
4. FPCF will provide karate and boxing activities to at-risk youth in community;
5. FPCF will track and report youth enrolled in program, school attendance and academic progress statistics indicated in grant and report to City on a monthly basis;
6. Will provide mentoring to youth and their families towards alternatives to gang violence.

3. REIMBURSEMENT FOR PROGRAM ACTIVITIES

For the aforementioned services, the City agrees to reimburse FPCF solely from allocated and available Grant funds for eligible costs incurred by FPCF in pursuit hereof, in any AGREEMENT not to exceed \$40,000 in accordance with the boxing and karate budget submitted by City (**Exhibit A**).

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

If FPCF should fail to comply with any provision of the AGREEMENT, the City shall be relieved of its obligation for 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 FPCF directly obtains additional funding for boxing and karate related services, then FPCF shall utilize said funding in conjunction with its terms, including any reimbursement of City for staffing, supplies, equipment, training and travel.

In the event that City directly obtains additional funding for boxing and karate services (i.e., through CalGRIP or other program), then City shall utilize said funding in conjunction with its terms, including any reimbursement of FPCF for staffing, supplies, training and travel.

4. AGREEMENT EFFECTIVENESS, TERM AND TERMINATION

The effectiveness of this AGREEMENT is contingent upon City receiving the Grant award and City's continuation of the MGPI program and boxing and karate structured youth activities. The parties shall be committed to the Grant Program for the balance of the entire funding cycle commencing January 1, 2013 and ending December 31, 2014. FPCF acknowledges and agrees that funding through the life of the grant is dependent upon satisfactory performance by FPCF, availability of funds and continuation by City of the MGPI program and boxing and karate structured youth activities.

Subject to the foregoing, the term of the AGREEMENT shall begin January 1, 2013 and ending December 31, 2014

Notwithstanding the foregoing, this AGREEMENT shall automatically suspend or terminate upon City's written notice therefore to FPCF of any of the following events: (i) Program, Grant, MGPI program, or January 1, 2013 and ending December 31, 2014 termination, (ii) any non-appropriation or non-allocation of Grant funding required in pursuit hereof, (iii) FPCF's illegal or improper use of funds, (iv) FPCF's failure to comply with any term of this AGREEMENT, or (v) FPCF's submittal of any substantially incorrect or incomplete itemized invoice required for reimbursement.

FPCF may terminate this AGREEMENT upon 30 days' written notice to City of any of the following events: (i) insufficient funding secured by FPCF which renders FPCF unable to compensate boxing and karate structured youth activities; or (ii) City's non-compliance with any term of this AGREEMENT.

5. TARGET POPULATION

City of Fresno at risk youth in need of a structured youth activity in areas with significant increase in gang violence

6. RECORDKEEPING AND PERFORMANCE DATA

FPCF shall track and submit to the City each month the following data:

- Total number of youth enrolled in boxing and karate
- Youth school attendance status pre/post enrollment quarterly
- Youth academic performance pre/post enrollment quarterly
- Youth behavior development (# visits to principal's office, # of suspensions, # of expulsions)

FPCF shall provide any monthly and quarterly reports, and any certifications as required by the City.

In the event of termination, the non-confidential reports prepared by FPCF shall be immediately turned over to the City by FPCF.

7. RESOURCES

FPD will provide:

- FPCF employees and volunteers use of City owned vehicle for use during youth activities; and

FPCF will provide:

- Employees and/or volunteers licensed by the State of California to operate a motor vehicle.
- All drivers enrolled in the Police Department's Volunteer Program.

8. FINANCIAL REPORTING, AUDITING AND DOCUMENT RETENTION

FPCF shall submit a monthly bill to FPD for the eligible expenses incurred in providing the boxing and karate structured youth activities. Billing documentation shall include the following:

- A breakdown of expenditures by cost category; and
- Copies of all purchase orders, requisitions and or receipts.

FPCF shall maintain accurate, complete, orderly and separate records for the boxing and karate structured youth activities. Records of FPCF expenses pertaining to the boxing and karate structured youth activities shall be kept on a generally recognized accounting basis. All records shall be available to City, BSCC, 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. In addition, all books, documents, papers, and records of FPCF pertaining to the boxing and karate 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

FPCF shall at all times comply with all applicable laws of the United States (including, but not limited to, HIPAA), the State of California and City, 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. FPCF 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.

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

By signing this AGREEMENT, FPCF certifies under penalty of perjury under the laws of the State of California that (i) FPCF will comply with the Drug-Free Workplace Act of 1990 (California Government Code sections 8350-8357); and (ii) FPCF is not listed on any federal or state list of individuals or organization 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. FPCF shall complete and submit to City all applicable forms required by the Grant.

10. CAPACITY OF AGENCY AND FPCF

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

This AGREEMENT does not evidence a partnership or joint venture between FPCF and City. FPCF shall have no authority to bind City absent City's express written consent. Except to the extent otherwise provided in this AGREEMENT, FPCF shall bear its own costs and expenses in pursuit thereof.

Because of its status as an independent contractor, FPCF and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to City employees. FPCF 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, FPCF shall be solely

responsible, indemnify, defend and save City harmless from all matters relating to employment and tax withholding for and payment of FPCF'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, FPCF may be providing services to others unrelated to City or to this AGREEMENT.

11. INSURANCE

Throughout the life of this Agreement, FPCF 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 by City'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 FPCF 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 not included within the above limits of liability. FPCF shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and FPCF 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 of policy cancellation of coverage, except for the Workers' Compensation policy which shall provide a 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, FPCF shall provide a new certificate evidencing renewal of such policy not less than 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, FPCF shall file with City 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 each of their officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so FPCF's insurance shall be primary and no contribution shall be required of City. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City and each of their officers, officials, employees, agents and volunteers. FPCF shall have furnished City with the certificate(s) and applicable endorsements for ALL required insurance prior to City execution of the Agreement. FPCF shall furnish City with copies of the actual policies upon the request of City Risk Manager and this requirement shall survive termination or expiration of this Agreement.

The fact that insurance is obtained by FPCF shall not be deemed to release or diminish the liability of FPCF, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City 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 FPCF. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of FPCF, its officers, officials, employees, agents, persons under the supervision of CONSULTANT, 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, FPCF 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 FPCF shall be withheld until notice is received by City 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 to terminate this Agreement.

If FPCF should subcontract all or any portion of the services to be performed under this Agreement, FPCF shall require each subcontractor to provide insurance protection in favor of City 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 FPCF and City prior to the commencement of any work by the subcontractor.

It is understood and agreed that City maintain insurance policies or self-insurance programs to fund their respective liabilities in AGREEMENT similarly required of FPCF.

12. INDEMNIFICATION

FPCF shall indemnify, hold harmless and defend City and each of their 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, malpractice and property damage) incurred by City, FPCF 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 FPCF or any of its officers, officials, employees, agents or volunteers in the performance of this AGREEMENT.

Except to the extent of the California statutory tort immunities afforded the City as a governmental agency, City shall indemnify, hold harmless and defend FPCF and each of their 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 FPCF, City 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 City 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 FPCF or any of its officers, officials, employees, agents or volunteers, City or any of its officers, officials, employees, agents or volunteers 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.

FPCF agrees that this Agreement shall in no way act to abrogate or waive any immunity available to City under the Tort Claims Act of the State of California.

If FPCF should subcontract all or any portion of the services to be performed under this Agreement, FPCF shall require each subcontractor to indemnify, hold harmless and defend City and each of their officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraphs.

This section shall survive termination or expiration of this AGREEMENT.

13. ATTORNEY'S FEES

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

14. 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.

15. 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.

16. BINDING

Subject to Section 18 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.

17. 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.

18. WAIVER

The waiver by either party of a breach by the other 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 provision herein.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

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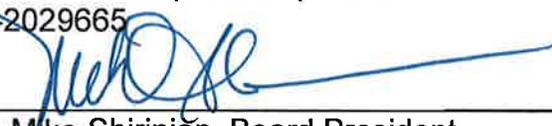
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IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO,
a California municipal corporation

By: 
JERRY DYER, Chief of Police
Fresno Police Department

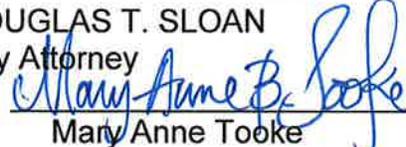
Fresno Police Chief's Foundation,
a California non-profit corporation
#41-2029665

By: 
Mike Shirinian, Board President,
Fresno Police Chief's Foundation

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By:  3/19/14
Deputy Date

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By:  March 7, 2014
Mary Anne Tooke Date
Deputy Attorney

Addresses:

CITY:
Fresno Police Department
Attention: Jerry Dyer,
Chief of Police
2323 Mariposa Mall
Fresno, CA. 93715

FPCF:
Fresno Police Chief's Foundation
Attention: Mike Shirinian,
Board President
2323 Mariposa Mall
Fresno, CA. 93715

Attachment:
Exhibit A – Cost Breakdown

Exhibit A
Cost Breakdown of Boxing and Karate Programs by
Fresno Police Chief's Foundation
(Effective January 1, 2013– December 31, 2014)

BUDGET

BOXING PROGRAM:

One Boxing Program Coordinator x \$150 x 17 months = \$2,550

One Boxing Coach monthly stipend \$300 x 17 months = \$5,100

Boxing Association Annual Dues @ \$320 each x 1 year = \$320

6 Boxers Yearly Licenses x \$65 each x 1 years= \$390

6 Uniforms (trunks, tops, shoes, sweat jumpsuit) x \$150 each= \$900

Boxing Equipment (gloves, tape, wraps, head gear, heavy bag) = \$2,260

Boxing Travel:

Per Diem \$40 per day x 20 tournaments x 2 people = \$1,600

6 Registrations x \$30 each x 6 tournament = \$1,080

Hotel \$100 per night x 2 nights x 20 tournaments = \$4,000

Vehicle Rental @ \$90 per days 2 days x 10 tournaments = \$1,800

KARATE PROGRAM:

3 Instructor Stipends x \$200 monthly x 17 months = \$10,200

Karate Equipment:(Dyna Head Gear, Chest Protectors, Vinyl Shin Guards, Warrior Punch & Kick, Warrior Shin, Cup and Supporter, Mouth guards, BO-Hardwood, BO-Case Nylon, Gear Bag) = \$1,200

Karate Travel:

100 Registrations x \$35 each = \$3,500

Staff Per Diem \$40 per day x 10 tournaments x 3 people x 5 tournaments = \$1,200

Hotel \$100 per night x 2 nights x 3 people x 5 tournaments = \$3,000

Vehicle Rental @ \$90 per day x 2 days x 5 tournaments = \$900

Total cost for the duration of the grant: \$40,000