

By. Reso # 2011-212.
adopted 10/20/11

ORIGINAL

**AGREEMENT
Between
FRESNO UNIFIED SCHOOL DISTRICT
And the
CITY OF FRESNO**

**Webster Elementary
2014**

GENERAL INFORMATION

FUSD:

FUSD Department: Webster Elementary
Program: School Improvement Grant
Contact Person: Kelli Wilkins

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:

District: Webster Elementary
School Site/Address: Fresno Unified School District
2600 E. Tyler Avenue
Fresno, CA 93701

This Independent Contractor Agreement ("Agreement") is made and entered into this 4th day of August 2014, by and between Webster Elementary in Fresno Unified School District ("FUSD"), and the City of Fresno, a municipal corporation ("CONTRACTOR"). FUSD 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. The program includes thirty (30) sessions of life science, earth science and physical science, two (2) Family Science Nights, seventeen (17) educational grade level focused field trips, for Fresno Unified School District's Webster Elementary school.
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 FUSD 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 FUSD 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 FUSD 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 August 4, 2014, and shall terminate on September 30, 2015. There shall be no extension of the term of the agreement without a written agreement signed by both Parties.
4. Compensation. FUSD shall pay CONTRACTOR a maximum of Seventy One Thousand Seven Hundred Thirty Nine Dollars and 80/100s (\$71,739.80) 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)] FUSD agrees to pay Contractor within thirty (30) days of receipt of invoice.
 - a. Maximum payment to CONTRACTOR for Leader services shall not exceed Sixteen Thousand Nine Hundred Sixty Dollars and 00/100s (\$16,960.00).
 - b. Payment to the CONTRACTOR of Forty Eight Thousand Two Hundred Fifty Eight Dollars and 00/100s (\$48,258.00) 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 Six Thousand Five Hundred Twenty One Dollars and 80/100s (\$6,521.80) 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 FUSD 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. FUSD may then proceed with the work in any manner FUSD deems proper.

7. Indemnification. CONTRACTOR shall indemnify, hold harmless and defend FUSD 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 FUSD, 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.

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

FUSD 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 FUSD.
13. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the CONTRACTOR and FUSD 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
Webster Elementary
Attention: Kelli Wilkins
Principal
2600 E. Tyler Avenue
Fresno, CA 93701

CONTRACTOR:

City of Fresno
PARCS Department
Attention: Manuel A. Mollinedo
Director
848 M Street 3rd Floor
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.

FUSD

Fresno Unified School District

By: _____
 Ruth F. Quinto Date
 Deputy Superintendent/CFO

Approved As To Form:

 Andrew De La Torre Date
 Director, Benefits and Risk Management

CONTRACTOR

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

By: Manuel A. Mollinedo 9-4-14
 Manuel A. Mollinedo Date
 Director

ATTEST:
 YVONNE SPENCE, CMC
 City Clerk

By: Cindy Bruer 9/10/14
 Deputy Date

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

By: Brandon M. Collet 8/29/14
 Brandon M. Collet Date
 Deputy

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

FUSD

Fresno Unified School District

By: Ruth F. Quinte 06/30/14
 Ruth F. Quinte Date
 Deputy Superintendent/CFO

CONTRACTOR

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

By: _____
 Bruce A. Rudd Date
 City Manager

Approved As To Form:

Andrew De La Torre 6/2/14
 Andrew De La Torre Date
 Director, Benefits and Risk Management

ATTEST:
 YVONNE SPENCE, CMC
 City Clerk

By: _____
 Deputy Date

APPROVED AS TO FORM:

Douglas T. Sloan
 Fresno City Attorney

By: _____
 Brandon M. Collet Date
 Deputy