

**AGREEMENT**  
**Between**  
**OWENS VALLEY CAREER DEVELOPMENT CENTER**  
**And the**  
**CITY OF**  
**FRESNO**

**RECEIVED**

**MAR 03 2014**

**Owens Valley Career Development Center**  
**2013-2014**  
**Agreement Number 13-14-272/RFP13-14-168**

**OVCDC**

**GENERAL INFORMATION**

**OVCDC:**

Program: Owens Valley Career Development Center  
Contact Person: Jenifer Philley

**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:**

Owens Valley Career Development Center

Site/Address:

Owens Valley Career Development Center  
5070 N. 6<sup>th</sup> Street  
Fresno, CA 93710

This Independent Contractor Agreement ("Agreement") is made and entered into this 18<sup>th</sup> day of February 2014, by and between Owens Valley Career Development Center ("OVCDC"), and the City of Fresno, a municipal corporation ("CONTRACTOR"). OVCDC and CONTRACTOR are sometimes referred to as Party and collectively as Parties.

1. **CONTRACTOR Services.** CONTRACTOR agrees to provide staff members to facilitate the science program curriculum. The curriculum includes (7) sessions of life science, earth science and physical science, and 1 bird presentation located at Owens Valley Career Development Center. The Parties anticipate that CONTRACTOR will provide 8 days of these services. All services under this Agreement will be provided by Manuel Hernandez who has been OVCDC HR Background cleared. The Parties agree that any person will be OVCDC Background cleared prior to providing services under this Agreement where contact with children is involved.
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 OVDC 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 OVDC 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 OVDC 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 February 18, 2014, and shall terminate on June 12, 2014. There shall be no extension of the term of the agreement without a written agreement signed by both Parties.
4. Compensation. OVDC shall pay CONTRACTOR a maximum of Two Thousand Four Hundred Forty-Seven Dollars and 50/100s (\$2,447.50) 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)] OVDC agrees to pay Contractor within thirty (30) days of receipt of invoice.
- a. Maximum payment to CONTRACTOR for Leader services shall not exceed One Thousand Dollars and 00/100s (\$1,000.00).
  - b. Payment to the CONTRACTOR of One Thousand Two Hundred Twenty Five Dollars and 00/100s (\$1,225.00) 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 Two Hundred Twenty Two Dollars and 50/100s (\$222.50) 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 OVCDL 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. OVCDL may then proceed with the work in any manner OVCDL deems proper.
7. Indemnification. CONTRACTOR shall indemnify, hold harmless and defend OVCDL 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 OVCDL, 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; provided nothing herein shall constitute a waiver by CONTRACTOR of governmental immunities including California Government Code section 810 et seq.. OVCDL agrees that this Agreement shall in no way act to abrogate or waive any immunities available to CONTRACTOR under the Tort Claims Act of the State of California.

OVCDL 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, OVCDL 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 OVCDL 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 OVCDL 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 OVCDL 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 OVCDL.
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 OVCDC or to any employment or fringe benefits from OVCDC. Payments to the CONTRACTOR pursuant to this Agreement will be reported to Federal and State taxing authorities as required. OVCDC will not withhold any money from compensation payable to CONTRACTOR. In particular, OVCDC 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 OVCDC.
13. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the CONTRACTOR and OVCDC 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:

**OVCDC:**  
 Attn: Contract Administrator  
 P.O. Box 847 (93515)  
 2574 Diaz Lane  
 Bishop, CA 93514  
 (760) 873-5107

**CONTRACTOR:**  
 City of Fresno  
 PARCS Department  
 Attention: Bruce A. Rudd  
 City Manager  
 848 M Street 3<sup>rd</sup> 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.
22. Sovereign Immunity Waiver Limitations: Contractor acknowledges that OVCDC, including its TANF and other programs, is a tribal consortium, without authority to waive the sovereign immunity of any consortium member Tribe. Any waiver of the sovereign immunity of the consortium member Tribes can only be provided by the written consent of the consortium member Tribe's governing body. Any waiver of the sovereign immunity of OVCDC can only be provided by the written consent of the OVCDC Board of Trustees. No such waiver has been provided by the terms of this Agreement, and Contractor agrees that nothing contained in this Agreement is or shall be construed as a waiver of the sovereign immunity of OVCDC or any consortium member Tribe.

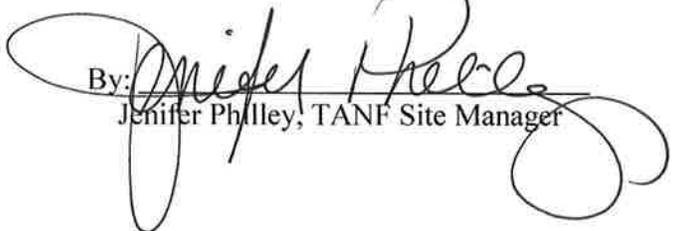
Executed at Fresno, California, on the date and year first written above.

**OVCDC**

Owens Valley Career Development Center

**CONTRACTOR**

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

By:   
Jennifer Philley, TANF Site Manager

By:   
Bruce A. Rudd  
City Manager

REVIEWED BY:

ATTEST:  
YVONNE SPENCE, CMC  
City Clerk

 3/4/14  
Human Resources Date

By:  3/18/14  
Deputy Date

 3/4/14  
Finance Date

APPROVED AS TO FORM:

Douglas T. Sloan  
Fresno City Attorney

By:  3/7/14  
Brandon M. Collet Date  
Deputy