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3                    THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_, 2017, by and  
4 between CALIFORNIA STATE UNIVERSITY, FRESNO ("FRESNO STATE"), the State of  
5 California acting in its higher education capacity, on behalf of its Fresno campus and City of  
6 Fresno, a California municipal corporation, through its Fresno Area Express (FAX) department  
7 ("CONTRACTOR").

8 WITNESSETH:

9 1. OBLIGATIONS OF THE CONTRACTOR

0 A. CONTRACTOR shall provide FRESNO STATE students, faculty and staff  
1 unlimited free access for each fixed-route transit trip on a FAX bus when the students, faculty, or  
2 staff present the appropriate FRESNO STATE identification card.

3 B. CONTRACTOR will provide FRESNO STATE thirty (30) day advance  
4 written notice of any cost adjustments or fare increases.

5 C. CONTRACTOR shall calculate the total number of fixed-route transit trips  
6 taken by FRESNO STATE students, faculty and staff, and shall invoice FRESNO STATE on a  
7 monthly basis in accordance with the number of trips provided.

8                    2.     OBLIGATIONS OF FRESNO STATE

9 A. FRESNO STATE shall provide CONTRACTOR with a current list of  
0 unacceptable identification cards in Excel or CSV format ("Bad list"). The Bad list will be  
1 maintained by FRESNO STATE and can be updated as needed, however such Bad List may not  
2 exceed ten thousand (10,000) records of Bad List users. Bad List may take up to seventy-two  
3 (72) hours to become effective at the farebox.

4 B. FRESNO STATE shall pay invoices received from CONTRACTOR within  
5 forty-five (45) days of receipt of invoice by FRESNO STATE.

|   |    |             |
|---|----|-------------|
| 6 | 3. | <u>TERM</u> |
|---|----|-------------|

7 This Agreement shall become effective on the 1st day of November, 2017 and

1 will be effective for one (1) year, and with mutual consent of both parties, may be renewed for up  
2 to two one- year extensions.

3 4. TERMINATION

4 A. Non-Allocation of Funds - The term of this Agreement, and the services to  
5 be provided hereunder, are contingent on the approval of funds by the appropriating government  
6 agency. Should sufficient funds not be allocated, the services provided may be modified, or this  
7 Agreement terminated, at any time by giving the CONTRACTOR thirty (30) days advance written  
8 notice.

9 B. Breach of Contract - FRESNO STATE may immediately suspend or  
10 terminate this Agreement in whole or in part, where in the determination of FRESNO STATE there  
11 is:

- 12 1) An illegal or improper use of funds;
- 13 2) A failure to comply with any term of this Agreement;
- 14 3) A substantially incorrect or incomplete report submitted to FRESNO  
15 STATE;
- 16 4) Improperly performed service.

17 In no event shall any payment by FRESNO STATE constitute a waiver by FRESNO  
18 STATE of any breach of this Agreement or any default which may then exist on the part of the  
19 CONTRACTOR. Neither shall such payment impair or prejudice any remedy available to  
20 FRESNO STATE with respect to the breach or default. FRESNO STATE shall have the right to  
21 demand of the CONTRACTOR the repayment to FRESNO STATE of any funds disbursed to the  
22 CONTRACTOR under this Agreement, which were not expended in accordance with the terms of  
23 this Agreement. The CONTRACTOR shall promptly refund any such funds upon demand.

24 C. Without Cause - Under circumstances other than those set forth above,  
25 this Agreement may be terminated by either party upon the giving of thirty (30) days advance  
26 written notice of an intention to terminate to the other party.

27 5. COMPENSATION: FRESNO STATE agrees to pay CONTRACTOR \$1.10 per  
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1 transit trip and CONTRACTOR agrees to receive compensation for each transit trip provided by  
2 CONTRACTOR to FRESNO STATE students, faculty and staff. CONTRACTOR shall submit  
3 monthly invoices in to FRESNO STATE. It is understood that all expenses incidental to  
4 CONTRACTOR'S performance of services under this Agreement shall be borne by  
5 CONTRACTOR.

6           6.     INDEPENDENT CONTRACTOR: In performance of the work, duties and  
7 obligations assumed by CONTRACTOR under this Agreement, it is mutually understood and  
8 agreed that CONTRACTOR, including any and all of the CONTRACTOR'S officers, agents, and  
9 employees will at all times be acting and performing as an independent contractor, and shall act in  
10 an independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or  
11 associate of FRESNO STATE. Furthermore, FRESNO STATE shall have no right to control or  
12 supervise or direct the manner or method by which CONTRACTOR shall perform its work and  
13 function. However, FRESNO STATE shall retain the right to administer this Agreement so as to  
14 verify that CONTRACTOR is performing its obligations in accordance with the terms and  
15 conditions thereof.

16                     CONTRACTOR and FRESNO STATE shall comply with all applicable  
17 provisions of law and the rules and regulations, if any, of governmental authorities having  
18 jurisdiction over matters the subject thereof.

19                     Because of its status as an independent contractor, CONTRACTOR shall have  
20 absolutely no right to employment rights and benefits available to FRESNO STATE employees.  
21 CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its  
22 employees all legally-required employee benefits. In addition, CONTRACTOR shall be solely  
23 responsible and save FRESNO STATE harmless from all matters relating to payment of  
24 CONTRACTOR'S employees, including compliance with Social Security withholding and all other  
25 regulations governing such matters. It is acknowledged that during the term of this Agreement,  
26 CONTRACTOR may be providing services to others unrelated to FRESNO STATE or to this  
27 Agreement.

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1           7. MUTUAL INDEMNIFICATION AND INSURANCE: CITY shall indemnify, hold  
2 harmless and defend FRESNO STATE and each of its officers, officials, employees, agents and  
3 volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether  
4 in contract, tort or strict liability, including but not limited to personal injury, death at any time and  
5 property damage) incurred by FRESNO STATE, CITY or any other person, and from any and all  
6 claims, demands and actions in law or equity (including attorney's fees and litigation expenses),  
7 arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or  
8 omissions, or willful misconduct of CITY or any of its officers, officials, employees, agents or  
9 volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver  
10 by CITY of governmental immunities including California Government Code section 810 et seq.

11                 FRESNO STATE shall indemnify, hold harmless and defend CITY and each of  
12 its officers, officials, employees, agents and volunteers from any and all loss, liability, fines,  
13 penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but  
14 not limited to personal injury, death at any time and property damage) incurred by the CITY,  
15 FRESNO STATE or any other person, and from any and all claims, demands and actions in law or  
16 equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly  
17 or indirectly from the negligent or intentional acts or omissions, or willful misconduct of FRESNO  
18 STATE or any of its officers, officials, employees, agents or volunteers in the performance of this  
19 Agreement; provided nothing herein shall constitute a waiver by FRESNO STATE of  
20 governmental immunities including California Government Code section 810 et seq.

21                 In the event of concurrent negligence on the part of CITY or any of its officers,  
22 officials, employees, agents or volunteers, and FRESNO STATE or any of its officers, officials,  
23 employees, agents or volunteers, the liability for any and all such claims, demands and actions in  
24 law or equity for such losses, fines, penalties, forfeitures, costs and damages shall be  
25 apportioned under the State of California's theory of comparative negligence as presently  
26 established or as may be modified hereafter.

27                 This section shall survive termination or expiration of this Agreement.  
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1           8.     MODIFICATION: Any matters of this Agreement may be modified from time  
2 to time by the written consent of all the parties without, in any way, affecting the remainder.

3           9.     NON-ASSIGNMENT: Neither party shall assign, transfer or sub-contract this  
4 Agreement nor their rights or duties under this Agreement without the prior written consent of the  
5 other party.

6           10.    AUDITS AND INSPECTIONS: The CONTRACTOR shall at any time during  
7 business hours, and as often as FRESNO STATE may deem necessary, make available to  
8 FRESNO STATE for examination all of its records and data with respect to the matters covered by  
9 this Agreement. The CONTRACTOR shall, upon request by FRESNO STATE, permit FRESNO  
10 STATE to audit and inspect all of such records and data necessary to ensure CONTRACTOR'S  
11 compliance with the terms of this Agreement.

12                     If this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR  
13 shall be subject to the examination and audit of the Auditor General for a period of three (3) years  
14 after final payment under contract (Government Code Section 8546.7).

15           11.    NOTICES: The persons and their addresses having authority to give and  
16 receive notices under this Agreement include the following:

17                     FRESNO STATE

18                     Vice President, Division of  
19                     Administrative Services  
20                     5200 N. Barton Ave. M/S ML52  
21                     Fresno, CA 93740  
22                     (559) 278-2083

23                     CONTRACTOR

24                     Director, City of Fresno  
25                     Fresno Area Express (FAX)  
26                     2223 G. Street  
27                     Fresno, CA 93706  
28                     (559) 621-7433

21                     Any and all notices between FRESNO STATE and the CONTRACTOR  
22 provided for or permitted under this Agreement or by law shall be in writing and shall be deemed  
23 duly served when personally delivered to one of the parties, or in lieu of such personal services,  
24 when deposited in the United States Mail, postage prepaid, addressed to such party.

25           12.    GOVERNING LAW: Venue for any action arising out of or related to this  
26 Agreement shall only be in Fresno County, California.

27                     The rights and obligations of the parties and all interpretation and performance  
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1 of this Agreement shall be governed in all respects by the laws of the State of California.

2 13. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement  
3 between the CONTRACTOR and FRESNO STATE with respect to the subject matter hereof and  
4 supersedes all previous Agreement negotiations, proposals, commitments, writings,  
5 advertisements, publications, and understanding of any nature whatsoever unless expressly  
6 included in this Agreement.

7 [SIGNATURE PAGE FOLLOWS.]  
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1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as  
2 of the day and year first hereinabove written.

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4 **CONTRACTOR:**  
City of Fresno – Fresno Area Express (FAX)

5 By \_\_\_\_\_  
6 Bruce Rudd  
7 Interim Director of Transportation  
8 Date: \_\_\_\_\_

**CALIFORNIA STATE UNIVERSITY, FRESNO**

By  \_\_\_\_\_  
Brian Cotham  
Director of Procurement  
Date: 7/10/17

9 APPROVED AS TO FORM:  
10 CITY ATTORNEY  
DOUGLAS SLOAN

11 By:  \_\_\_\_\_  
12 Amanda B. Freeman  
13 Deputy City Attorney  
14 Date: 7/11/17

15 ATTEST:  
16 YVONNE SPENCE, CMC

17 By: \_\_\_\_\_  
18 Deputy  
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