

FAX TRANSIT SERVICE AGREEMENT

THIS AGREEMENT is made and entered into this 25th day of July, 2024, by and between CALIFORNIA STATE UNIVERSITY, FRESNO (FRESNO STATE), the State of California acting in its higher education capacity, on behalf of its Fresno campus and the City of Fresno, a California municipal corporation (CITY), through its Department of Transportation, Fresno Area Express (FAX).

WITNESSETH:

1. OBLIGATIONS OF THE CITY:

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

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

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

2. OBLIGATIONS OF FRESNO STATE:

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

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

3. TERM:

This Agreement shall become effective on the 1st day of September, 2024 and will be effective for one (1) year, and with mutual consent of both parties, can be renewed for up to two (2) additional one (1) year extensions.

1 4. TERMINATION:

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

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

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

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

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

25 5. COMPENSATION: FRESNO STATE agrees to pay CITY \$0.75 per transit
26 trip, not to exceed \$22 per month, per rider, and not to exceed \$125,000.00 annually and CITY
27 agrees to receive compensation for each transit trip provided by CITY to FRESNO STATE
28 students, faculty, and staff. CITY shall submit monthly invoices to FRESNO STATE. It is

1 understood that all expenses incidental to CITY'S performance of services under this Agreement
2 shall be borne by CITY.

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

12 CITY and FRESNO STATE shall comply with all applicable provisions of law and
13 the rules and regulations, if any, of governmental authorities having jurisdiction over matters the
14 subject thereof.

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

23 7. MUTUAL INDEMNIFICATION AND INSURANCE: CITY shall indemnify, hold
24 harmless and defend FRESNO STATE and each of its officers, officials, employees, agents and
25 volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages
26 (whether in contract, tort or strict liability, including but not limited to personal injury, death at any
27 time and property damage) incurred by FRESNO STATE, CITY or any other person, and from
28 any and all claims, demands and actions in law or equity (including attorney's fees and litigation

1 expenses), arising or alleged to have arisen directly or indirectly from the negligent or intentional
2 acts or omissions, or willful misconduct of CITY or any of its officers, officials, employees, agents
3 or volunteers in the performance of this Agreement; provided nothing herein shall constitute a
4 waiver by CITY of governmental immunities including California Government Code section 810
5 et seq.

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

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

22 This section shall survive termination or expiration of this Agreement.

23 8. MODIFICATION: Any matters of this Agreement may be modified from time
24 to time by the written consent of all the parties without, in any way, affecting the remainder.

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

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1 10. AUDITS AND INSPECTIONS: The CITY shall at any time during business
2 hours, and upon thirty (30) day written notice, make available to FRESNO STATE for examination
3 all its records and data with respect to the matters covered by this Agreement. The CITY shall,
4 upon request by FRESNO STATE, permit FRESNO STATE to audit and inspect all such records
5 and data necessary to ensure the CITY'S compliance with the terms of this Agreement.

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

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

	<u>FRESNO STATE</u>	<u>CITY</u>
	Vice President, Division of	Director, City of Fresno
	Administrative Services	Department of Transportation
	5200 N. Barton Ave.	Fresno Area Express (FAX)
	M/S ML52	2223 G. Street
	Fresno, CA 93740	Fresno, CA 93706
	(559) 278-2083	(559) 621-7433

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

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

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

24 13. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement
25 between the CITY and FRESNO STATE with respect to the subject matter hereof and
26 supersedes all previous Agreement negotiations, proposals, commitments, writings,
27 advertisements, publications, and understanding of any nature whatsoever unless expressly
28 included in this Agreement.

1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and
2 year first hereinabove written.

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4 CITY OF FRESNO
5 DEPARTMENT OF TRANSPORTATION
6 FRESNO AREA EXPRESS (FAX)

CALIFORNIA STATE UNIVERSITY,
FRESNO

7 By: _____
8 Gregory Barfield
9 Director of Transportation

DocuSigned by:
10 *Brian Cotham*
11 6227E83A5D134C6...
12 By: _____
13 Brian Cotham
14 Title: Director of Procurement
15 Date: 6/25/2024

10 APPROVED AS TO FORM:
11 CITY ATTORNEY
12 ANDREW JANZ

13 By: *Sukhman S. Sekhon* 6/26/2024
14 6917A7D9D8364A9...
15 Sukhman S. Sekhon Date
16 Deputy City Attorney

By: _____

Name: _____

Title: _____

Chief Financial Officer, or Treasurer, or any
Assistant Treasurer

18 ATTEST:
19 TODD STERMER, CMC

20 By: _____
21 City Clerk Date

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