

1 **AGREEMENT**

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3 THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2014, by  
4 and between CALIFORNIA STATE UNIVERSITY, FRESNO, a public university ("CSUF") and City  
5 of Fresno, a California municipal corporation, through its Fresno Area Express ("FAX") department  
6 ("CONTRACTOR").

7 WITNESSETH:

8 1. OBLIGATIONS OF THE CONTRACTOR

9 A. CONTRACTOR shall provide CSUF students, faculty and staff unlimited  
10 free access for each fixed-route transit trip on a FAX bus when the students, faculty, or staff  
11 present the appropriate CSUF identification card.

12 B. CONTRACTOR will provide CSUF thirty (30) days advance written notice  
13 of any cost adjustments or fare increases.

14 C. CONTRACTOR shall calculate the total number of fixed-route transit trips  
15 taken by CSUF students, faculty and staff, and shall invoice CSUF on a monthly basis in  
16 accordance with the number of trips provided.

17 2. OBLIGATIONS OF CSUF

18 A. CSUF shall provide CONTRACTOR with a current list of unacceptable  
19 identification cards in Excel or CSV format ("Black List"). The Black List will be maintained by  
20 CSUF and can be updated as needed, however such Black List may not exceed ten thousand  
21 (10,000) records of Black List users.

22 B. CSUF shall pay invoices received from CONTRACTOR within forty-five  
23 (45) days of receipt of invoice by CSUF.

24 3. TERM

25 This Agreement shall become effective on the 18th day of August, 2014 and  
26 shall terminate on the 31st day of October, 2017.

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1           4.     TERMINATION

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

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

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

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

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

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

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

10                     CONTRACTOR and CSUF shall comply with all applicable provisions of law  
11 and the rules and regulations, if any, of governmental authorities having jurisdiction over matters  
12 the subject thereof.

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

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

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

26           9.     AUDITS AND INSPECTIONS: The CONTRACTOR shall at any time during  
27 business hours, and as often as CSUF may deem necessary, make available to CSUF for  
28 examination all of its records and data with respect to the matters covered by this Agreement. The

1 CONTRACTOR shall, upon request by CSUF, permit CSUF to audit and inspect all of such  
2 records and data necessary to ensure CONTRACTOR'S compliance with the terms of this  
3 Agreement.

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

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

9	<u>CSUF</u>	<u>CONTRACTOR</u>
10	Vice President, Division of	Director, City of Fresno
11	Administrative Services	Fresno Area Express (FAX)
12	5200 N. Barton Ave. M/S ML52	2223 G. Street
	Fresno, CA 93740	Fresno, CA 93706
	(559) 278-2083	(559) 621-7433

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

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

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

21 12. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement  
22 between the CONTRACTOR and CSUF with respect to the subject matter hereof and supersedes  
23 all previous Agreement negotiations, proposals, commitments, writings, advertisements,  
24 publications, and understanding of any nature whatsoever unless expressly included in this  
25 Agreement.

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

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

**CALIFORNIA STATE UNIVERSITY, FRESNO**

6 By \_\_\_\_\_  
7 Brian R. Marshall  
8 Director of Transportation

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Vice President, Administrative Services

9 Date: \_\_\_\_\_

Date: \_\_\_\_\_

10  
11 **ATTEST:**  
12 **YVONNE SPENCE, CMC**  
13 By: \_\_\_\_\_  
14 Deputy

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Chief Financial Officer, or Treasurer, or any  
Assistant Treasurer

15 **APPROVED AS TO FORM:**  
16 **CITY ATTORNEY**  
17 **DOUGLAS SLOAN**  
18 By: Mary Anne B. Tooke  
19 Mary Anne B. Tooke  
20 Deputy City Attorney

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Date: July 9, 2014