

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

5 B. SCCCD shall pay invoices received from FAX within 45 days of receipt of
6 invoice by SCCCD.

7 3. TERM

8 This agreement shall become effective on January 3, 2023 and will be effective
9 through June 30, 2024. Upon written consent of both parties, the agreement may be renewed for
10 two, one-year extensions.

11 4. TERMINATION

12 A. Non-Allocation of Funds - The terms of this agreement, and the services to
13 be provided hereunder, are contingent on the approval of funds by the appropriating government
14 agency. Should sufficient funds not be allocated, the services provided may be modified, or this
15 agreement terminated, at any time by giving FAX thirty days advance written notice.

16 B. Breach of Contract - SCCCD may immediately suspend or terminate this
17 agreement in whole or in part, where in the determination of SCCCD there is:

- 18 1) An illegal or improper use of funds;
19 2) A failure to comply with any term of this agreement;
20 3) A substantially incorrect or incomplete report submitted to SCCCD;
21 4) Improperly performed service.

22 In no event shall any payment by SCCCD constitute a waiver by SCCCD of any
23 breach of this agreement or any default which may then exist on the part of FAX. Neither shall
24 such payment impair or prejudice any remedy available to SCCCD with respect to the breach or
25 default. SCCCD shall have the right to demand of FAX the repayment to SCCCD of any funds
26 disbursed to FAX under this agreement which were not expended in accordance with the terms of
27 this agreement. FAX shall promptly refund any such funds upon demand.

28 C. Without Cause - This agreement may be terminated by either party for any

1 reason upon the giving of thirty days advance written notice of an intention to terminate.

2 5. COMPENSATION: SCCCD agrees to pay FAX \$0.75 per ride, which
3 includes free transfers within 90-minutes of each paid ride, for students and SCCCD
4 employees, not to exceed \$22 per month, per rider; FAX agrees to receive compensation for
5 each transit trip provided by FAX from SCCCD for their designated students, faculty and staff.
6 FAX shall submit monthly invoices to SCCCD. It is understood that all expenses incidental to
7 FAX's performance of services under this agreement shall be borne by FAX.

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

17 FAX and SCCCD shall comply with all applicable provisions of law and the
18 rules and regulations, if any, of governmental authorities having jurisdiction over matters the
19 subject thereof.

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

27 7. MUTUAL INDEMNIFICATION AND INSURANCE: FAX shall indemnify, hold
28 harmless and defend SCCCD and each of its officers, officials, employees, agents and volunteers

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

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

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

25 This section shall survive termination or expiration of this agreement.

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

28 9. NON-ASSIGNMENT: Neither party shall assign, transfer or sub-contract this

1 agreement nor their rights or duties under this agreement without the prior written consent of the
2 other party.

3 10. AUDITS AND INSPECTIONS: FAX shall at any time during business hours,
4 and as often as SCCCD may deem necessary, make available to SCCCD for examination all of its
5 records and data with respect to the matters covered by this agreement. FAX shall, upon request
6 by SCCCD, permit SCCCD to audit and inspect all of such records and data necessary to ensure
7 FAX'S compliance with the terms of this agreement.

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

10 SCCCD
11 Vice Chancellor, Operations
12 1171 Fulton Street
13 Fresno, CA 93721
14 559-243-7182

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

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

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

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

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

27 [SIGNATURE PAGE FOLLOWS.]
28

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

3 CITY OF FRESNO,
4 A California municipal corporation

STATE CENTER COMMUNITY
COLLEGE DISTRICT

5 By: _____
6 Gregory Barfield
Interim Transportation Director

By: *Christine D. Miktarian*
Christine Miktarian (Nov 9, 2022 06:23 PST)
Christine D. Miktarian
Vice Chancellor, Operations

7
8 APPROVED AS TO FORM:
9 Rina Gonzales
Interim City Attorney

REVIEWED BY: _____

10 By: *Pauline Brickey* *11/9/22*
11 Pauline Brickey Date
12 Deputy City Attorney

13 ATTEST:
14 TODD STERMER, CMC
City Clerk

15 By: _____
16 Deputy Date