

**MASTER INSTRUCTIONAL SERVICE AGREEMENT
BETWEEN
FRESNO CITY COLLEGE AND
CITY OF FRESNO FIRE DEPARTMENT**

This Agreement is made and entered into this 1st day of July 2018, by and between Fresno City College (FCC), a college of the State Center Community College District (SCCCD), and City of Fresno, a municipal corporation, (CITY) (together, "the Parties").

WITNESSETH

WHEREAS, FCC is authorized by the California Education Code (Education Code) and Title 5 of the California Code of Regulations (Title 5), to conduct Contract Instruction, Assessment and Counseling Services to serve community needs; and

WHEREAS, CITY desires to contract with FCC for to provide educational services to its in-service personnel as set forth herein; and

WHEREAS, the parties mutually desire cooperation of the parties to provide quality instruction and training to meet community needs, as set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and promises hereinafter contained to be kept and performed by the respective parties, FCC and CITY mutually agree as follows:

Section 1. RESPONSIBILITIES OF FCC

- a. FCC shall offer approved courses to meet educational needs and requirements of the CITY's Fire Department's (FFD's) in-service personnel (all class participants are in-service fire personnel and shall hereafter be referred to as "students"), as specified by FFD.
- b. FCC shall provide a coordinator to work with FFD. Said coordinator shall act as the FFD co-director for all FCC affiliated educational courses. Under no circumstances, however, shall the coordinator have authority over the remaining operations of FFD, including but not limited to, personnel issues concerning FFD employees, operational budget, or the use, maintenance, or scheduling of FFD facilities.
- c. FCC and FFD will mutually ensure ancillary and support services are provided for the students. (e.g. Counseling, Guidance, & Placement Assistance).
- d. FCC shall assist the FFD in registration and other support services to students in order to adequately manage and control its course offerings.

- e. FCC shall approve of the selection of instructors and facilitators and evaluate the quality of instruction to ensure that it meets the needs of the students and the accreditation requirements of FCC. FCC shall have the primary right to control and direct the instructional activities of all instructors.
- f. FCC shall ensure that course offerings meet all appropriate requirements of the Education Code and Title 5.
- g. FCC shall consult the FFD on any revisions to existing FCC courses designed for the FFD program, initiation of new courses, or any other changes, in order to ensure the quality of educational services and to meet the needs of the FFD.
- h. FCC shall provide the use of its facilities and equipment free of charge for use by the FFD, on an as-needed, space available basis for affiliated programs. FCC shall attempt to provide use of said facilities and equipment during normal business hours.
- i. FCC shall demonstrate control and direction through such actions as: providing the instructor of record an orientation, instructor's manual, Title 5 course outlines, curriculum materials, testing and grading procedures and any other materials and services it would provide its hourly instructors on campus.
- j. FCC shall waive the health fee for all FFD students.
- k. By signing this Agreement, FCC certifies it does not receive full compensation for direct education costs of the course from any public or private agency, individual or group.
- l. FCC has the primary right and responsibility to control and direct the activities of the person or persons furnished by the CITY during the term of the Agreement.

Section 2. RESPONSIBILITIES OF FFD

- a. FFD shall provide classroom space for use as off-campus sites by FCC, free of charge for "Instructional Service Agreement (ISA) courses.
- b. FFD shall provide instructors, facilitators, equipment, materials, day-to-day management support, and all other related overhead necessary to conduct FCC's Instructional Service Agreement (ISA) courses.
- c. FFD shall cooperate with FCC to ensure all personnel, equipment, and materials used in carrying out its responsibilities under this Agreement conform to Education Code and Title 5 mandated standards governing instructional programs, including minimum qualifications for instructors.
- d. CITY shall use the money received as compensation for services under this Agreement for educational and training related purposes as they relate to fire and public safety training programs.
- e. FFD shall assist FCC in collecting all instructional fees associated with the class offerings under this Agreement.

- f. Records of student attendance and achievement shall be maintained by FFD. Records will be open for review at all times by officials of the college and submitted on a schedule developed by FCC.
- g. By signing this Agreement, CITY certifies the training facility is open to the public and the instructional activities agreed upon herein will not be fully funded by other sources.

Section 3. PAYMENT FOR SERVICES

- a. In consideration of the services provided herein, FCC shall pay CITY \$3.50 per student instructional hour eligible for state general apportionment.
- b. For fiscal year 2018/2019 (for purposes of this Agreement, "fiscal year" begins July 1 and ends June 30), said hours shall not exceed 101,200 Student Instructional Hours or 192.76 Full Time Equivalent Students (FTES), unless mutually agreed prior to May 1, 2019. The same limits shall apply in each subsequent fiscal year, unless otherwise agreed in writing by the parties.
- c. Any subsequent year's student instructional hour cap shall be determined at least sixty (60) days prior to the start of the next fiscal year.
- d. CITY shall submit to FCC an invoice of all mutually agreed upon instructional hours provided under this Agreement. FCC shall pay CITY the agreed contract price within 45 days.
- e. Instructional hours are defined as those hours reported on SCCCD's CCFS-320, California Community Colleges Apportionment Attendance Reports, which are subject to audit by SCCCD's independent auditor and the California Community Colleges Chancellor's Office.

Section 4. INDEMNIFICATION

- a. CITY shall indemnify, hold harmless and defend FCC, and each of its officers, officials, agents, and volunteers from 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 CITY, FCC 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 of CITY or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by CITY of governmental immunities including California Government Code Section 810 et seq.
- b. FCC shall indemnify, hold harmless and defend CITY 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 CITY, FCC 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 of FCC or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by FCC of governmental immunities including California Government Code Section 810 et seq.

- c. In the event of concurrent negligence on the part of FCC or any of its officers, officials, employees, agents or volunteers, and CITY 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.
- d. This section shall survive expiration or termination of this Agreement.

Section 5. INSURANCE

- a. Each party shall insure its activities in connection with this Agreement and maintain at all times insurance in coverage and limit amounts reasonably necessary to protect itself against injuries and damages arising from the acts or omissions caused by each party, their respective Boards, officers, employees and agents in the performance of this Agreement. This insurance requirement may be satisfied through a program of self-insurance, or insurance coverage afforded to public entities through a Joint Powers Authority (JPA) risk pool.

Section 6. MISCELLANEOUS PROVISIONS

- a. If any provisions of this Agreement are found to be, or become, contrary to applicable law or regulations, or court decisions, FCC and CITY agree that the Agreement shall be renegotiated as it relates to said provision, and the remainder of the Agreement shall remain in full force and effect.
- b. Term and Termination. The term of this Agreement shall start on July 1, 2018, and terminate on June 30, 2021. Notwithstanding the foregoing, this Agreement may be terminated at any time, with or without cause, upon written notice given to the other party at least thirty (30) days prior to the end of the term in which classes are currently in session. In the event of such termination, each party shall fully pay and discharge all obligations accruing to the other party up to and including the date of termination. Neither party shall incur any additional liability to the other by reason of such termination.
- c. Either party hereto maintains the right to cancel services prior to the beginning of each course at no cost to either party to this Agreement.
- d. Nondiscrimination. To the extent required by controlling federal, state and local law, the parties shall not employ discriminatory practices in the provision of services, course instruction, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

e. This Agreement supersedes any and all other agreements, oral or written, between the parties hereto with respect to the use of the aforesaid facilities or services and contains all covenants and agreements between the parties with respect hereto. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or by anyone acting on behalf of any parties, which are not embodied herein, and that no other agreement, statement, or promise not contained herein shall be valid or binding. Any modification to this Agreement shall be effective only if it is in writing and signed by the CITY and FCC in the form of an amendment to this Agreement.

f. Compliance with Law. In providing the services required under this Agreement, FCC shall at all times comply with all applicable laws of the United States, the State of California and CITY, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

g. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

h. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

i. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

j. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses

k. Notice or correspondence required by this Agreement shall be delivered personally or by United States mail as follows:

To FCC:	Jacob McAfee	To FFD:	Leslie Smith
	Career and Technology		Fresno Fire Department
	Center		911 H Street
	2930 E. Annadale		Fresno, CA 93721
	Fresno, CA 93741		

l. The specific courses covered under this Agreement are described in Attachment 1, which are incorporated herein by this reference.

- m. In addition to the specific course noted above, the parties may offer additional courses under this Agreement on the same terms and conditions. FFD shall provide FCC of any desire to add a class with a minimum of 40 days' notice to FCC before the desired class start date. Each additional course of instruction shall require a written agreement to offer the course signed by FFD's Fire Chief or designee and the FCC President or designee. The course details must be set forth in writing as with the courses listed above, and will become attachments to this Agreement.

[Signatures follow on the next page.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement at Fresno, California to be effective July 1, 2018.

City of Fresno, a Municipal Corporation

Fresno City College, a college of the State Center Community College District

By: _____
Kerri Donis, Chief
Fresno Fire Department

By: _____
Mr. Edwin Eng
Vice Chancellor Finance and Administration

Date: _____

Date: _____

APPROVED AS TO LEGAL FORM:
DOUGLAS T. SLOAN
City Attorney

REVIEWED AND RECOMMENDED
FOR APPROVAL

By:  _____
Brandon M. Collet,
Senior Deputy City Attorney

By:  _____
Dr. Carole Goldsmith, President
Fresno City College

Date: 4/2/18

Date: 4/2/18

ATTEST:
YVONNE SPENCE, MMC
City Clerk

APPROVED AS TO LEGAL FORM:

By: _____
Deputy

By: _____
Gregory Taylor, District Counsel

Date: _____

Date: _____