

1 **City of Fresno & State Center Community College District**
2 **TRANSIT AGREEMENT**

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4 This transit agreement is dated _____, 2017, and is between State Center
5 Community College District ("SCCCD"), and City of Fresno, a California municipal corporation,
6 through its Fresno Area Express department ("FAX").

7 **WHEREAS**

8 SCCCD wants to provide transit services to its students, faculty, and staff to improve
9 access to campuses and mitigate parking shortages, traffic, and pollution; and

10 FAX operates a transit bus service; and

11 The parties are entering into this agreement for SCCC to purchase from FAX transit
12 services to provide to SCCC students, faculty, and staff.

13 The parties therefore agree as follows:

14 1. **OBLIGATIONS OF FAX**

15 A. FAX shall provide SCCC students, faculty, and staff unlimited free access
16 for each fixed-route transit trip on a FAX bus when the students, faculty, or staff present the
17 appropriate SCCC identification card or other identification system agreed to by the parties.

18 B. FAX will provide SCCC 30-day advance written notice of any cost
19 adjustments or fare increases.

20 C. FAX shall calculate the total number of fixed-route transit trips taken by
21 SCCC students, faculty and staff, and shall invoice SCCC on a monthly basis in accordance
22 with the number of trips provided.

23 D. FAX will assist SCCC in ensuring the compatibility of SCCC-issued
24 identification cards with its farebox system, or, in the event that SCCC-issued identification cards
25 cannot be made compatible with the FAX farebox system, provide to SCCC at cost other
26 compatible identification media for each SCCC rider.

27 2. **OBLIGATIONS OF SCCC**
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1 A. SCCCD shall provide FAX with a current list of unacceptable identification
2 cards in Excel or CSV format ("Black list"). The Black list will be maintained by SCCCD and can
3 be updated as needed, however such Black List may not exceed 10,000 records of Black List
4 users. Black List may take up to 72 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 August 1, 2017, and shall terminate
9 on July 31, 2018.

10 4. TERMINATION

11 A. Non-Allocation of Funds - The terms of this agreement, and the services to
12 be provided hereunder, are contingent on the approval of funds by the appropriating government
13 agency. Should sufficient funds not be allocated, the services provided may be modified, or this
14 agreement terminated, at any time by giving the FAX 30 days advance written notice.

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

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

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

27 C. Without Cause - This agreement may be terminated by either party for any
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1 reason upon the giving of 30 days advance written notice of an intention to terminate to the other
2 party.

3 5. COMPENSATION: SCCCD agrees to pay FAX \$1.10 per ride, which
4 includes free transfers within 90-minutes of each paid ride, for students and SCCCD
5 employees, not to exceed \$48 per month per rider, and, FAX agrees to receive compensation for
6 each transit trip provided by FAX from SCCCD for their designated students, faculty and staff.
7 FAX shall submit monthly invoices to SCCCD. SCCCD agrees to pay FAX \$1.10 per sticker
8 ordered, plus tax and shipping. It is understood that all expenses incidental to FAX'S
9 performance of services under this agreement shall be borne by FAX.

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

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

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

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

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

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

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

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

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

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

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

14 12.

15 SCCCDD

16 Vice Chancellor, Finance & Administration
17 Or Associate Vice Chancellor,
18 Business and Operations
1525 E. Weldon Ave.
Fresno, CA 93704
(559) 442-8255

FAX

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

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

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

26 The rights and obligations of the parties and all interpretation and performance
27 of this agreement shall be governed in all respects by the laws of the State of California.
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1 14. ENTIRE AGREEMENT: This agreement constitutes the entire agreement
2 between the FAX and SCCCD with respect to the subject matter hereof and supersedes all
3 previous agreement negotiations, proposals, commitments, writings, advertisements, publications,
4 and understanding of any nature whatsoever unless expressly included in this agreement.

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6
7 [SIGNATURE PAGE FOLLOWS.]
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1 The parties are signing this agreement on the date stated in the introductory clause.

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

5 By _____
6 Bruce Rudd,
7 Director of Transportation


8 Date: _____

STATE CENTER COMMUNITY COLLEGE
DISTRICT

By   _____
Edwin Eng, Vice Chancellor – Finance
and Administration

Date: 7/12/17

9 **APPROVED AS TO FORM:**
10 **CITY ATTORNEY**
11 **DOUGLAS SLOAN**

12 By:  _____
13 Amanda B. Freeman,
14 Deputy City Attorney

15 Date: 7/13/17

16 **ATTEST:**
17 **YVONNE SPENCE, CMC**

18 By: _____
19 Deputy