

A G R E E M E N T

THIS AGREEMENT is made and entered into this 21st day of Aug, 2014, by and between CALIFORNIA STATE UNIVERSITY ("CSU"), the State of California acting in its higher education capacity, on behalf of its Fresno campus and City of Fresno, a California municipal corporation, through its Fresno Area Express ("FAX") department ("CONTRACTOR").

W I T N E S S E T H:

1. OBLIGATIONS OF THE CONTRACTOR

A. CONTRACTOR shall provide CSU 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 CSU identification card.

B. CONTRACTOR will provide CSU thirty (30) day advance written notice of any cost adjustments or fare increases.

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

2. OBLIGATIONS OF CSU

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

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

3. TERM

This Agreement shall become effective on the 1st day of October, 2014 and shall terminate on the 31st day of October, 2017.

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 - CSU may immediately suspend or terminate this
8 Agreement in whole or in part, where in the determination of CSU 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 CSU;
12 4) Improperly performed service.

13 In no event shall any payment by CSU constitute a waiver by CSU of any breach of
14 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 CSU with respect to the breach or
16 default. CSU shall have the right to demand of the CONTRACTOR the repayment to CSU of any
17 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 CSU upon the giving of thirty (30) days advance written
22 notice of an intention to terminate to CONTRACTOR.

23 5. COMPENSATION: CSU 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 CSU students, faculty and staff. CONTRACTOR shall submit monthly invoices
26 in to CSU. It is understood that all expenses incidental to CONTRACTOR'S performance of
27 services under this Agreement shall be borne by CONTRACTOR.

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

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

14 Because of its status as an independent contractor, CONTRACTOR shall have
15 absolutely no right to employment rights and benefits available to CSU employees.

16 CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its
17 employees all legally-required employee benefits. In addition, CONTRACTOR shall be solely
18 responsible and save CSU harmless from all matters relating to payment of CONTRACTOR'S
19 employees, including compliance with Social Security withholding and all other regulations
20 governing such matters. It is acknowledged that during the term of this Agreement,
21 CONTRACTOR may be providing services to others unrelated to CSU or to this Agreement.

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

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

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

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

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

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

27 10. AUDITS AND INSPECTIONS: The CONTRACTOR shall at any time during
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1 business hours, and as often as CSU may deem necessary, make available to CSU for
2 examination all of its records and data with respect to the matters covered by this Agreement. The
3 CONTRACTOR shall, upon request by CSU, permit CSU to audit and inspect all of such records
4 and data necessary to ensure CONTRACTOR'S compliance with the terms of this Agreement.

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

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

10	<u>CSU</u>	<u>CONTRACTOR</u>
11	Vice President, Division of	Director, City of Fresno
12	Administrative Services	Fresno Area Express (FAX)
13	5200 N. Barton Ave. M/S ML52	2223 G. Street
14	Fresno, CA 93740	Fresno, CA 93706
15	(559) 278-2083	(559) 621-7433

16 Any and all notices between CSU and the CONTRACTOR 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
23 of 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 CONTRACTOR and CSU with respect to the subject matter hereof and supersedes
26 all previous Agreement negotiations, proposals, commitments, writings, advertisements,
27 publications, and understanding of any nature whatsoever unless expressly included in this
28 Agreement.

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)**

6 By Brian Marshall
7 Brian Marshall
8 Title: Director of Transportation
9 Date: _____

CALIFORNIA STATE UNIVERSITY, FRESNO

By Cynthia Tenente-Matson
Name: Cynthia Tenente-Matson
Vice President, Administrative Services
Date: 9/24/14

9 **ATTEST:**
10 **YVONNE SPENCE, CMC**

11 By: [Signature] 9-26-2014
12 Deputy

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

13 **APPROVED AS TO FORM:**
14 **CITY ATTORNEY**
15 **DOUGLAS SLOAN**

16 By: Mary Anne B. Tooke
17 Mary Anne B. Tooke, Deputy City Attorney
18 Date: Sept. 11, 2014

*VP and
Chief Financial
Officer is
the same.*