

2A  
6/19/14

**A G R E E M E N T**

THIS AGREEMENT is made and entered into this ~~30<sup>th</sup>~~ day of ~~September~~, 2014, by and between the COUNTY OF FRESNO, a Political Subdivision of the State of California, hereinafter referred to as "COUNTY", and City of Fresno, a municipal corporation, through its Fresno Area Express (FAX) department whose address is 2223 G Street, Fresno, CA 93706, hereinafter referred to as "CONTRACTOR".

WITNESSETH:

1. OBLIGATIONS OF THE CONTRACTOR

A. CONTRACTOR shall provide bus passes and bus tokens to the COUNTY at a cost per unit rate as identified in Exhibit "A" – Supply and Cost per Unit, attached hereto and incorporated herein by this reference.

B. CONTRACTOR will provide firm pricing and will provide COUNTY thirty (30) day advance written notice of any cost per unit adjustments.

C. CONTRACTOR shall invoice the individual COUNTY departments for the orders they place at the addresses set forth in Exhibit "B" – County Department Invoicing, attached hereto and incorporated herein by this reference. CONTRACTOR shall submit invoices monthly.

2. OBLIGATIONS OF THE COUNTY

A. COUNTY shall order from CONTRACTOR, as needed, bus passes and bus tokens as identified in Exhibit "A" – Supply and Cost per Unit. COUNTY is under no obligation to order any certain amount of bus passes and/or bus tokens from CONTRACTOR during the term of this Agreement.

B. COUNTY shall pay invoices received from CONTRACTOR within 45 days of receipt of invoice by COUNTY.

C. COUNTY shall not order bus passes and bus tokens from contractor unless and until sufficient funds for each said order have been properly appropriated by COUNTY.

3. TERM

CITY OF FRESNO  
City Clerk's Office (Original)

1 This Agreement shall become effective upon execution and shall terminate on  
2 the 30th day of June, 2017.

3 4. TERMINATION

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

9 B. Breach of Contract - The COUNTY may immediately suspend or terminate  
10 this Agreement in whole or in part, where in the determination of the COUNTY there is:

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

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

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

26 5. COMPENSATION

27 COUNTY agrees to pay CONTRACTOR and CONTRACTOR agrees to  
28 receive compensation for bus passes and bus tokens actually ordered by COUNTY as identified in

1 Exhibit "A" – Supply and Cost per Unit. CONTRACTOR shall submit monthly invoices in triplicate  
2 to the County of Fresno as outlined in Exhibit "B" – County Department Invoicing.

3 In no event shall total purchases under this Agreement be in excess of Three  
4 Million Nine Hundred Seventy-Three Thousand Eight Hundred and No/100 Dollars (\$3,973,800)  
5 during the term of this Agreement. It is understood that all expenses incidental to  
6 CONTRACTOR'S performance of services under this Agreement shall be borne by  
7 CONTRACTOR.

8 6. INDEPENDENT CONTRACTOR

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

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

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

1 Agreement.

2 7. MODIFICATION

3 Any matters of this Agreement may be modified from time to time by the written  
4 consent of all the parties without, in any way, affecting the remainder.

5 8. NON-ASSIGNMENT

6 Neither party shall assign, transfer or sub-contract this Agreement nor their  
7 rights or duties under this Agreement without the prior written consent of the other party.

8 9. AUDITS AND INSPECTIONS

9 The CONTRACTOR shall at any time during business hours, and as often as  
10 the COUNTY may deem necessary, make available to the COUNTY for examination all of its  
11 records and data with respect to the matters covered by this Agreement. The CONTRACTOR  
12 shall, upon request by the COUNTY, permit the COUNTY to audit and inspect all of such records  
13 and data necessary to ensure CONTRACTOR'S compliance with the terms of this Agreement. If  
14 this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be subject to  
15 the examination and audit of the Auditor General for a period of three (3) years after final  
16 payment under contract (Government Code Section 8546.7).

17 10. NOTICES

18 The persons and their addresses having authority to give and receive notices  
19 under this Agreement include the following:

20	<u>COUNTY</u>	<u>CONTRACTOR</u>
21	Director, Department of Social	Director, City of Fresno
22	Services	Fresno Area Express (FAX)
23	P.O. Box 24055	2223 G. Street
24	Fresno, CA 93779-4055	Fresno, CA 93706

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

1           11.    GOVERNING LAW

2                    Venue for any action arising out of or related to this Agreement shall only be in  
3 Fresno County, California.

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

6           12.    ENTIRE AGREEMENT

7                    This Agreement constitutes the entire agreement between the CONTRACTOR  
8 and COUNTY with respect to the subject matter hereof and supersedes all previous Agreement  
9 negotiations, proposals, commitments, writings, advertisements, publications, and understanding  
10 of any nature whatsoever unless expressly included in this 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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**CONTRACTOR:**

**COUNTY OF FRESNO**

City of Fresno - Fresno Area Express (FAX)

By: B. Marshall

Print Name: BRIAN R. MARSHALL

Title: Director of Transportation

Date: 7/29/14

By: Cindy Buer, Deputy

Print Name: YVONNE SPENCE

Title: Clerk, City of Fresno

Date: 10/6/14

By: Mary Anne B. Tooke

Print Name: Mary Anne B. Tooke

Title: Attorney, City of Fresno

Date: Aug. 4, 2014

Mailing Address:  
2223 G Street, Fresno, CA 93706  
Contact: Fresno Area Express (FAX), Director  
Phone No.: (559) 621-7433

**PLEASE SEE ADDITIONAL SIGNATURE PAGE ATTACHED**

By: [Signature]

Print Name: Andreas Borges

Title: Chairperson, Board of Supervisors

Date: 9/30/2014

By: Bernice E. Seidel, Deputy

Print Name: BERNICE E. SEIDEL

Title: Clerk, Board of Supervisors

Date: 9/30/2014

1 APPROVED AS TO ACCOUNTING FORM:  
2 VICKI CROW, C.P.A., AUDITOR-CONTROLLER  
3 TREASURER-TAX COLLECTOR

4  
5 By: Vicki Crow

6  
7 Date: 9/11/14  
8

APPROVED AS TO LEGAL FORM  
DANIEL C. CEDERBORG,  
COUNTY COUNSEL

By: Daniel C. Cederborg

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

9 REVIEWED AND RECOMMENDED  
10 FOR APPROVAL:

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12 By: Delfino Neira  
13 Delfino Neira, Director  
14 Department of Social Services

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16  
17 Date: 8-26-14

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19 By: Dawan Utecht  
20 Dawan Utecht, Director  
21 Department of Behavioral Health

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23 Date: 8-28-14  
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25  
26

By: David Pomaville

David Pomaville, M.B.A., R.E.H.S.  
Director  
Department of Public Health

27 Date: 8-26-14  
28

PLEASE SEE NEXT PAGE  
FOR ACCOUNTING INFORMATION

1 **DEPARTMENT OF SOCIAL SERVICES:**

2 Fund / Subclass: 0001/10000

3 Organization: 56107001/6645

4 Account / Program: 7870

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6 **DEPARTMENT OF PUBLIC HEALTH:**

7 Fund / Subclass: 0001/10000

8 Organization: 56201748/56201659/56201662/56201706

9 Account / Program: 7415

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11 **DEPARTMENT OF BEHAVIORAL HEALTH:**

12 Fund / Subclass: 0001/10000

13 Organization: 56302096/56302230/56302242/56302246/56302999/56304311/

14 56304314/56304315/56304316/56304622

15 Account / Program: 7400

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## Exhibit "A" – Supply and Cost Per Unit\*

<u>Supply</u>	<u>Original Cost Per Unit</u>	<u>Discounted Cost Per Unit</u>
1. Tokens (Singles)	\$1.25	\$1.10
2. Tokens (20 Token Roll)	\$22.50	\$22.50
3. Tokens (50 Token Roll)	\$55.00	\$55.00
4. Metro Pass	\$48.00	\$48.00
Metro Pass – One time bulk purchase up to 21,000 passes and with advanced payments (5% discount)	\$48.00	\$45.60
Metro Pass - Purchases above 21,000 passes (10% discount)	\$48.00	\$43.20

\*Prices herein are subject to change, with notice, in accordance with changes in the City's Master Fee Schedule.

### Fresno County Discount Plan:

#### **Tokens**

- A 12% discount will be extended for all purchases of single tokens. Discounted prices for a 20 token roll and 50 token roll are currently listed in the City's Master Fee Schedule and available to the general public.

#### **Passes**

- 5% discount on one bulk purchase of metro passes made at the beginning of each fiscal year for up to 21,000 passes and only when two advanced payments are made.
  - First payment of 50% for a Fiscal Year's worth of passes.
    - In FY 2014-2015 the first payment of 50% is to be received within 30 days of the Board's approval of the contract.
    - In future Fiscal Years the first payment is to be received by August 30<sup>th</sup>.
  - Second payment of remaining 50% of the value of a Fiscal Year's worth of passes.
    - In FY 2014-2015 the second payment of 50% to be received within 120 days of the Board's approval of the contract.
    - In future Fiscal Years the second payment is to be received by October 31<sup>st</sup>.
- At \$45.60 per pass, the maximum one time bulk discount on 21,000 metro passes would be \$50,400.
- Passes can be delivered/picked up monthly or in bulk (currently we have 12 months of passes available for purchase).
- Account will be reconciled annually to ensure that County does not overpay/underpay. Unused tokens/passes to be returned for credit.
- Any Metro pass purchased above 21,000 passes will be discounted by 10% at a cost of \$43.20 per pass.

**Exhibit "B" – County Department Invoicing**

**Each County Department placing an order for supplies shall be individually invoiced in triplicate as follows:**

Fresno County Department of Social Services  
Accounts Payable  
P.O. Box 24055  
Fresno, CA 93779-4055

Fresno County Department of Behavioral Health  
Accounts Payable  
P.O. Box 45003  
Fresno, CA 93718-9886

Fresno County Department of Public Health  
Accounts Payable  
P.O. Box 11867  
Fresno, CA 93775-1867