

AGREEMENT

This Agreement is made and entered into this 17th day of October 2017, 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 Department of Transportation Fresno Area Express (FAX) whose address is 2223 G Street, Fresno, CA 93706, hereinafter referred to as "CONTRACTOR."

WITNESSETH:

WHEREAS, the State of California mandates COUNTY to provide supportive services including transportation for clients in Welfare-to-Work Activities, Child Welfare Services, Behavioral Health Services and Public Health Services; and

WHEREAS, CONTRACTOR is the sole provider of bus service within the Fresno Metropolitan area and is willing to provide these services subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of their mutual covenants and conditions, the parties hereto agree as follows:

1. SERVICES

A. CONTRACTOR shall provide fare media to the COUNTY at a cost per unit 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 ninety (90) days advance written notice of any cost per unit adjustments.

C. COUNTY is under no obligation to order any certain amount of fare media from CONTRACTOR during the term of this Agreement.

2. TERM

The term of this Agreement shall be for a period of three (3) years, effective upon execution through and including June 30, 2020. This agreement may be extended for two (2) additional consecutive twelve (12) month periods upon the approval of both parties no later than thirty (30) days prior to the first day of the next twelve month extension period. The Director of Department of Social Services (DSS), or designee, is authorized to execute such written approval on behalf of COUNTY

1 based on CONTRACTOR's satisfactory performance.

2 **3. TERMINATION**

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

7 B. Breach of Contract - COUNTY may immediately suspend or terminate this
8 Agreement in whole or in part, where in the determination of COUNTY 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 invoice submitted to COUNTY;

12 In no event shall any payment by COUNTY constitute a waiver by COUNTY of any
13 breach of this Agreement or any default which may then exist on the part of CONTRACTOR. Neither
14 shall such payment impair or prejudice any remedy available to COUNTY with respect to the breach
15 or default. COUNTY shall have the right to demand of CONTRACTOR the repayment to COUNTY
16 of any funds disbursed to CONTRACTOR under this Agreement, which in the judgment of COUNTY
17 were not expended in accordance with the terms of this Agreement. CONTRACTOR shall promptly
18 refund any such funds upon demand or, at COUNTY's option; such repayment shall be deducted from
19 future payments owing to CONTRACTOR under this Agreement.

20 C. Without Cause - Under circumstances other than those set forth above, this
21 Agreement may be terminated by CONTRACTOR or COUNTY or COUNTY's DSS Director, or
22 designee, upon thirty (30) days advance written notice of an intention to terminate the Agreement.

23 **4. COMPENSATION**

24 COUNTY agrees to pay CONTRACTOR and CONTRACTOR agrees to receive
25 compensation for fare media actually ordered by COUNTY as identified in Exhibit
26 "A"- Supply and Cost per Unit.

27 For the first term of this Agreement, in no event shall total purchases under this
28 Agreement be in excess of Four Million Six Hundred Fifteen Thousand Seven Hundred Thirty One

1 and No/100 Dollars (\$4,615,731.00). Each twelve month term thereafter shall not be in excess of One
2 Million Five Hundred Thirty-Eight Thousand Five Hundred Seventy Seven and No/100 Dollars
3 (\$1,538,577.00). The cumulative total of this Agreement shall not be in excess of Seven Million Six
4 Hundred Ninety-Two Thousand Eight Hundred Eighty Five and No/100 Dollars (\$7,692,885.00). It is
5 understood that all expenses incidental to CONTRACTOR's performance of services under this
6 Agreement shall be borne by CONTRACTOR.

7 Except as provided below regarding State payment delays, payments by COUNTY shall
8 be in arrears, for services provided during the preceding month, within thirty (30) days after receipt,
9 verification, and approval of CONTRACTOR's invoices by COUNTY. If CONTRACTOR should
10 fail to comply with any provision of this Agreement, COUNTY shall be relieved of its obligation for
11 further compensation. All final claims shall be submitted by CONTRACTOR within sixty (60) days
12 following the final month of service for which payment is claimed. No action shall be taken by
13 COUNTY on claims submitted beyond the sixty (60) day closeout period. Any compensation which
14 is not expended by CONTRACTOR pursuant to the terms and conditions of this Agreement shall
15 automatically revert to COUNTY.

16 The services provided by CONTRACTOR under this Agreement are funded in whole or
17 in part by the State of California. In the event that funding for these services is delayed by the State
18 Controller, COUNTY may defer payment to CONTRACTOR. The amount of the deferred payment
19 shall not exceed the amount of funding delayed by the State Controller to COUNTY. The period of
20 time of the deferral by COUNTY shall not exceed the period of time of the State Controller's delay of
21 payment to COUNTY plus thirty (30) days.

22 **5. INVOICING**

23 CONTRACTOR shall invoice COUNTY in arrears by the tenth (10th) day of each month
24 for actual expenses incurred and services rendered in the previous month to addresses set forth in
25 Exhibit "B"- County Department Invoicing. No reimbursement for services shall be made until
26 invoices, reports and outcomes are received, reviewed and approved by COUNTY.

27 At the discretion of COUNTY, if an invoice is incorrect or is otherwise not in proper
28 form or substance, COUNTY shall have the right to withhold payment as to only that portion of the

1 invoice that is incorrect or improper after five (5) days prior notice to CONTRACTOR.
2 CONTRACTOR agrees to continue to provide services for a period of ninety (90) days after
3 notification of an incorrect or improper invoice. If after the ninety (90) day period, the invoice(s) is
4 still not corrected to COUNTY's satisfaction, COUNTY's DSS Director or designee may elect to
5 terminate this Agreement on behalf of COUNTY, pursuant to the termination provisions stated in
6 Paragraph Three (3) of this Agreement.

7 **6. INDEPENDENT CONTRACTOR**

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

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

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1 **7. MODIFICATION**

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

4 B. An increase in the City's Fee Schedule will not affect the total compensation as
5 stated in Section Four (4) in this Agreement.

6 C. CONTRACTOR hereby agrees that changes to the compensation under this
7 Agreement may be necessitated by a reduction in funding from State and/or Federal sources.
8 COUNTY's DSS Director or designee may modify the maximum compensation depending on State
9 and Federal funding availability, as stated in Section Four (4) in this Agreement. CONTRACTOR
10 further understands that this Agreement is subject to any restrictions, limitations or enactments of all
11 legislative bodies which affect the provisions, term, or funding of this Agreement in any manner.

12 **8. NON-ASSIGNMENT**

13 Neither party shall assign, transfer or subcontract this Agreement nor their rights or
14 duties under this Agreement without the prior written consent of the other party.

15 **9. HOLD-HARMLESS**

16 CONTRACTOR agrees to indemnify, save, hold harmless, and at COUNTY's request,
17 defend COUNTY, its officers, agents and employees from any and all costs and expenses, including
18 attorney fees and court costs, damages, liabilities, claims, and losses occurring or resulting to
19 COUNTY in connection with the performance, or failure to perform, by CONTRACTOR, its officers,
20 agents, or employees under this Agreement, and from any and all costs and expenses, including
21 attorney fees and court costs, damages, liabilities, claims, and losses occurring or resulting to any
22 person, firm, or corporation who may be injured or damaged by the performance, or failure to
23 perform, of CONTRACTOR, its officers, agents, or employees under this Agreement. In addition,
24 CONTRACTOR agrees to indemnify COUNTY for Federal, State of California and/or local audit
25 exceptions resulting from noncompliance herein on the part of the CONTRACTOR.

26 **10. INSURANCE**

27 Without limiting COUNTY's right to obtain indemnification from CONTRACTOR or
28 any third parties, CONTRACTOR, at its sole expense, shall maintain in full force and effect the

1 following insurance policies throughout the term of this Agreement:

2
3 A. Commercial General Liability

4 Commercial General Liability Insurance with limits of not less than One Million
5 Dollars (\$1,000,000) per occurrence and an annual aggregate of Two Million
6 Dollars (\$2,000,000). This policy shall be issued on a per occurrence basis.
7 COUNTY may require specific coverage including completed operations,
8 product liability, contractual liability, Explosion, Collapse, and Underground
9 (XCU), fire legal liability or any other liability insurance deemed necessary
10 because of the nature of the Agreement.

11 B. Automobile Liability

12 Comprehensive Automobile Liability Insurance with limits for bodily injury of
13 not less than Two Hundred Fifty Thousand Dollars (\$250,000) per person, Five
14 Hundred Thousand Dollars (\$500,000) per accident and for property damages of
15 not less than Fifty Thousand Dollars (\$50,000), or such coverage with a
16 combined single limit of Five Hundred Thousand Dollars (\$500,000). Coverage
17 should include owned and non-owned vehicles used in connection with this
18 Agreement.

19 C. Professional Liability

20 If CONTRACTOR employs licensed professional staff (*e.g.* Ph.D., R.N.,
21 L.C.S.W., M.F.C.T.) in providing services, Professional Liability Insurance with
22 limits of not less than One Million Dollars (\$1,000,000) per occurrence, Three
23 Million Dollars (\$3,000,000) annual aggregate.

24 D. Worker's Compensation

25 A policy of Worker's Compensation Insurance as may be required by the
26 California Labor Code.

27 CONTRACTOR shall obtain endorsements to the Commercial General Liability
28 insurance naming the County of Fresno, its officers, agents, and employees, individually and
collectively, as additional insured, but only insofar as the operations under this Agreement are
concerned. Such coverage for additional insured shall apply as primary insurance and any other
insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees shall be
excess only and not contributing with insurance provided under CONTRACTOR's policies herein.
This insurance shall not be cancelled or changed without a minimum of thirty (30) days advance
written notice given to COUNTY.

1 Within thirty (30) days from the date CONTRACTOR signs this Agreement,
2 CONTRACTOR shall provide certificates of insurance and endorsements as stated above for all of the
3 foregoing policies, as required herein, to the County of Fresno, DSSInvoices@co.fresno.ca.us ,
4 Attention: Contract Analyst, stating that such insurance coverages have been obtained and are in full
5 force; that the County of Fresno, its officers, agents and employees will not be responsible for any
6 premiums on the policies; that such Commercial General Liability insurance names the County of
7 Fresno, its officers, agents and employees, individually and collectively, as additional insured, but
8 only insofar as the operations under this Agreement are concerned; that such coverage for additional
9 insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by
10 COUNTY, its officers, agents and employees, shall be excess only and not contributing with insurance
11 provided under CONTRACTOR's policies herein; and that this insurance shall not be cancelled or
12 changed without a minimum of thirty (30) days advance written notice given to COUNTY.

13 In the event CONTRACTOR fails to keep in effect at all times insurance coverage as
14 herein provided, COUNTY may, in addition to other remedies it may have, suspend, or terminate this
15 Agreement upon the occurrence of such event.

16 All policies shall be with admitted insurers licensed to do business in the State of
17 California. Insurance purchased shall be from companies possessing a current A.M. Best, Inc. rating
18 of A FSC VII or better.

19 **11. CONFIDENTIALITY**

20 All services performed by CONTRACTOR under this Agreement shall be in
21 conformance with all applicable Federal, State of California, and/or local laws and regulations relating
22 to confidentiality.

23 **12. NON-DISCRIMINATION**

24 During the performance of this Agreement CONTRACTOR shall not unlawfully
25 discriminate against any employee or applicant for employment, or recipient of services, because of
26 ethnic group identification, gender, gender identity, gender expression, sexual orientation, color,
27 physical disability, mental disability, medical condition, national origin, race, ancestry, marital status,
28 religion, or religious creed, pursuant to all applicable State of California and Federal statutes and

1 regulations.

2 **13. CONFLICT OF INTEREST**

3 No officer, agent, or employee of COUNTY who exercises any function or
4 responsibility for planning and carrying out the services provided under this Agreement shall have any
5 direct or indirect personal financial interest in this Agreement. In addition, no employee of COUNTY
6 shall be employed by CONTRACTOR to fulfill any contractual obligations with COUNTY.

7 CONTRACTOR shall also comply with all Federal, State of California, and local conflict of interest
8 laws, statutes, and regulations, which shall be applicable to all parties and beneficiaries under this
9 Agreement and any officer, agent, or employee of COUNTY.

10 **14. PROHIBITION ON PUBLICITY**

11 None of the funds, materials, property or services provided directly or indirectly under
12 this Agreement shall be used for CONTRACTOR's advertising, fundraising, or publicity (i.e.,
13 purchasing of tickets/tables, silent auction donations, etc.) for the purpose of self-promotion.

14 **15. AUDITS AND INSPECTIONS**

15 CONTRACTOR shall at any time during business hours, and as often as COUNTY may
16 deem necessary, make available to COUNTY for examination all of its records and data with respect
17 to the matters covered by this Agreement. CONTRACTOR shall, upon request by COUNTY, permit
18 COUNTY to audit and inspect all such records and data necessary to ensure CONTRACTOR's
19 compliance with the terms of this Agreement.

20 If this Agreement exceeds Ten Thousand and No/100 Dollars (\$10,000.00),
21 CONTRACTOR shall be subject to the examination and audit of the State of California Auditor
22 General for a period of three (3) years after final payment under contract (California Government
23 Code section 8546.7).

24 In addition, CONTRACTOR shall cooperate and participate with COUNTY's fiscal
25 review process and comply with all final determinations rendered by the COUNTY's fiscal review
26 process. If COUNTY reaches an adverse decision regarding CONTRACTOR's services to
27 consumers, it may result in the disallowance of payment for services rendered, or in additional
28 controls to the delivery of services, or in the termination of this Agreement, at the discretion of

1 COUNTY. If as a result of COUNTY's fiscal review process a disallowance is discovered due to
2 CONTRACTOR's deficiency, CONTRACTOR shall be financially liable for the amount previously
3 paid by COUNTY to CONTRACTOR and this disallowance will be adjusted from CONTRACTOR's
4 future payments, at the discretion of COUNTY. In addition, COUNTY shall have the sole discretion
5 in the determination of fiscal review outcomes, decisions and actions.

6 **16. NOTICES**

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

9 COUNTY

10 Director, County of Fresno
11 Department of Social Services
12 PO BOX 1912
13 Fresno, CA 93718-1912

CONTRACTOR

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

14 **17. CHANGE OF LEADERSHIP / MANAGEMENT**

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

19 In the event of any change in the status of CONTRACTOR'S leadership or
20 management, CONTRACTOR shall provide written notice to COUNTY within thirty (30) days from
21 the date of change. Such notification shall include any new leader or manager's name, address and
22 contact information. "Leadership or management" shall include any employee, member, or owner of
23 CONTRACTOR who either a) directs individuals providing services pursuant to this Agreement,
24 b) exercises control over the manner in which services are provided, or c) has authority over
25 CONTRACTOR's finances.

26 **18. GOVERNING LAW**

27 The parties agree, that for the purposes of venue, performance under this Agreement is
28 to be in Fresno County, California.

The rights and obligations of the parties and all interpretation and performance of this

1 Agreement shall be governed in all respects by the laws of the State of California.

2 **19. ENTIRE AGREEMENT**

3 This Agreement, including all Exhibits, and CONTRACTOR's response thereto,
4 constitutes the entire agreement between CONTRACTOR and COUNTY with respect to the subject
5 matter hereof and supersedes all previous agreement negotiations, proposals, commitments, writings,
6 advertisements, publications, and understandings of any nature whatsoever unless expressly included
7 in this Agreement.

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

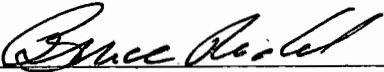
3 ATTEST:

4 CONTRACTOR:

COUNTY OF FRESNO


5 City of Fresno -
6 Fresno Area Express (FAX)

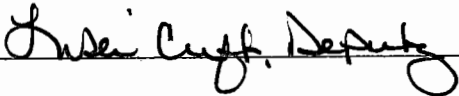
7 By 
8 Brian Pacheco, Chairman and/or
9 Sal Quintero, Vice-Chairman
10 Board of Supervisors

11 By 

12 Print Name: Bruce Rudd
13 Title: _____
14 Director of Transportation

15 BERNICE E. SEIDEL, Clerk
16 Board of Supervisors

17 By 

18 By 

19 Print Name: Cindy Bruer
20 Title: Deputy
21 Clerk, City of Fresno

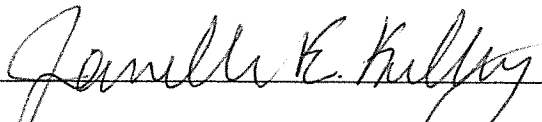
22 PLEASE SEE ADDITIONAL
23 SIGNATURE PAGE ATTACHED

24 By 


25 Print Name: Amanda Freeman
26 Title: Deputy
27 Attorney, City of Fresno

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

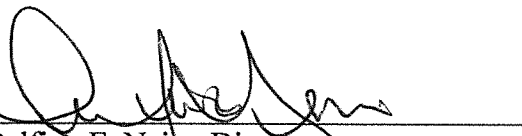
1 APPROVED AS TO LEGAL FORM:
2 DANIEL C. CEDERBORG, COUNTY COUNSEL

3
4 By 

5 APPROVED AS TO ACCOUNTING FORM:
6 OSCAR J. GARCIA, C.P.A., AUDITOR-CONTROLLER/
7 TREASURER-TAX COLLECTOR

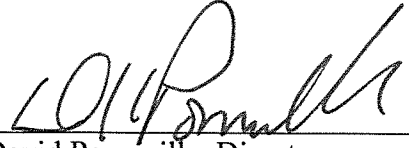
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9 By 

10 REVIEWED AND RECOMMENDED
11 FOR APPROVAL:

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13 By 
14 Delfino E. Neira, Director
15 Department of Social Services

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18 **PLEASE SEE ADDITIONAL
19 SIGNATURE PAGE ATTACHED**

1 REVIEWED AND RECOMMENDED
2 FOR APPROVAL:

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4 By 
5 David Pomaville, Director
6 Department of Public Health

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9 **PLEASE SEE ADDITIONAL**
10 **SIGNATURE PAGE ATTACHED**

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1 REVIEWED AND RECOMMENDED
2 FOR APPROVAL:

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4 By *Dawan Utecht*
5 Dawan Utecht, Director
6 Department of Behavioral Health
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1 DEPARTMENT OF SOCIAL SERVICES:

2 Fund/Subclass: 0001/10000

3 Organization: 56107001/6645

4 Account/Program: 7870

5 DEPARTMENT OF PUBLIC HEALTH:

6 Fund/Subclass: 0001/10000

7 Organization: 56201748/56201659/56201662/56201706/56201700/56201612/56201645

8 Account/Program: 7415

9 DEPARTMENT OF BEHAVIORAL HEALTH:

10 Fund/Subclass: 0001/10000

11 Organization: 56302096/56302230/56302242/56302246/56302999/56304311/56304314/

12 56304315/56304316/56304622

13 Account/Program: 7870/0

14 DEN:nam

Supply and Cost Per Unit

| Fee Description | Price |
|--|-----------------|
| Fixed Route: | |
| Cash Fare - One Way | \$1.25 |
| Reduced Cash Fare - One way* Seniors (65 years or older) with valid ID People with disabilities with valid ID Medicare card holders | \$0.60 |
| 31-Day Pass Unlimited rides on FAX and Clovis Transit | \$48.00 |
| 31-Day Reduced Fare Pass (unlimited rides on FAX) Seniors (65 years or older) with valid ID People with disabilities with valid ID Medicare card holders | \$24.00 |
| 1 - Ride Card | \$1.25 |
| 1 - Ride Card Bundle of 20 | \$22.50 |
| 1 - Ride Card Bundle of 50 | \$55.00 |
| 1 - Ride Card Bundle of 250 | \$275.00 |
| 1 - Ride Card (Reduced Fare) | \$0.60 |
| 10 - Ride Card | \$11.25 |
| 10 - Ride Card (Reduced Fare) | \$6.00 |
| Group Fee Per Round Trip Field trip fee for school groups up to 25 persons between 9 a.m. and 2 p.m. on fixed routes. Groups with more than 25 people up to a maximum of 35 people will be charged the base cash fare price - one way | \$25.00 |
| Transit Identification Cards - fee for original or replacement Renewal of an expired ID is free | \$3.00 |
| Handy Ride: | |
| 31-Day Pass for ADA Certified Persons (Maximum 60 one-way trips per 31 day period) Certified attendant rides free when accompanying ADA certified person who has paid the appropriate fare | \$48.00 Free |
| Notes: | |
| Children 6 and younger ride free when accompanied by a fare paying adult. Limited to a maximum of 4 children. Children over 48" tall may be required to show proof of age | Free |

Prices herein are subject to change, with 90-day advance notice, in accordance with changes in the City's Master Fee Schedule.

Department Invoicing

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

1. Fresno County Department of Social Services
ATTN: Contract Analyst
DSSIinvoices@co.fresno.ca.us
2. Fresno County Department of Behavioral Health
Accounts Payable
DBH-Invoices@co.fresno.ca.us
3. Fresno County Department of Public Health
DPHBOAP@co.fresno.ca.us