

SERVICE AGREEMENT

This Service Agreement (“Agreement”) is made and entered into, effective on _____ (the “Effective Date”) and is between the City of Fresno, a municipal corporation, through its Department of Transportation Fresno Area Express (FAX), whose address is 2223 G Street, Fresno, CA 93706 (“Contractor”), and the County of Fresno, a political subdivision of the State of California (“County”).

Recitals

A. WHEREAS, the County has a duty to respond to various emergencies/disasters occurring in the unincorporated areas of the Fresno County Operational Area and to coordinate and assist with the disaster response in jurisdictions within the Fresno County Operational Area; and

B. WHEREAS, emergencies/disasters may necessitate issuing evacuation orders and evacuation warnings to residents located within and near areas affected by an emergency/disaster; and

C. WHEREAS, the County and other jurisdictions located within the Operational Area may need to request transportation resources from other agencies to assist in evacuating areas under an evacuation order or warning in a timely manner; and

D. WHEREAS, the Contractor has numerous buses, including wheelchair accessible buses, and drivers and has offered to deploy such transportation resources as it is able to the area under evacuation order or evacuation warning to transport affected residents to a designated safe location upon request by the County.

The parties therefore agree as follows:

Article 1

Contractor’s Services

1.1 **Scope of Services.** The Contractor shall perform all of the services provided in the “Contractor Responsibilities” section of Exhibit A to this Agreement, titled “Scope of Services.”

1.2 **Representation.** The Contractor represents that it is qualified, ready, willing, and able to perform all of the services provided in this Agreement.

1 DPHBOAP@fresnocountyca.gov or addressed to the County of Fresno, Department of Public
2 Health, P.O. Box 11867, Fresno, CA 93775, Attention: OES Staff Analyst. The Contractor shall
3 submit each invoice within 60 days after the month in which the Contractor performs services
4 and in any case within 60 days after the end of the term or termination of this Agreement.

5 3.4 **Payment.** The County shall pay each correctly completed and timely submitted
6 invoice within 45 days after receipt. The County shall remit any payment to the Contractor's
7 address specified in the invoice.

8 3.5 **Incidental Expenses.** The Contractor is solely responsible for all of its costs and
9 expenses that are not specified as payable by the County under this Agreement.

10 **Article 4**

11 **Term of Agreement**

12 4.1 **Term.** This Agreement is effective on the date that the parties sign this Agreement
13 and terminates three years from the effective date, except as provided in section 4.2,
14 "Extension," or Article 6, "Termination and Suspension," below.

15 4.2 **Extension.** The term of this Agreement may be extended for no more than two, one-
16 year periods only upon written approval of both parties at least 30 days before the first day of
17 the next one-year extension period. The Director of the Department of Public Health or his or
18 her designee is authorized to sign the written approval on behalf of the County based on the
19 Contractor's satisfactory performance. The extension of this Agreement by the County is not a
20 waiver or compromise of any default or breach of this Agreement by the Contractor existing at
21 the time of the extension whether or not known to the County.

22 **Article 5**

23 **Notices**

24 5.1 **Contact Information.** The persons and their addresses having authority to give and
25 receive notices provided for or permitted under this Agreement include the following:

26 **For the County:**
27 Director, Department of Public Health
28 County of Fresno
P.O. Box 11867
Fresno, CA 93775

DPHContracts@fresnocountyca.gov

For the Contractor:
City Manager, City of Fresno
City of Fresno, Department of Transportation
2600 Fresno Street
Fresno, CA 93721

5.2 **Change of Contact Information.** Either party may change the information in section 5.1 by giving notice as provided in section 5.3.

5.3 **Method of Delivery.** Each notice between the County and the Contractor provided for or permitted under this Agreement must be in writing, state that it is a notice provided under this Agreement, and be delivered either by personal service, by first-class United States mail, by an overnight commercial courier service, or by Portable Document Format (PDF) document attached to an email.

(A) A notice delivered by personal service is effective upon service to the recipient.

(B) A notice delivered by first-class United States mail is effective three County business days after deposit in the United States mail, postage prepaid, addressed to the recipient.

(C) A notice delivered by an overnight commercial courier service is effective one County business day after deposit with the overnight commercial courier service, delivery fees prepaid, with delivery instructions given for next-day delivery, addressed to the recipient.

(D) A notice delivered by PDF document attached to an email is effective when transmission to the recipient is completed (but, if such transmission is completed outside of County business hours, then such delivery is deemed to be effective at the next beginning of a County business day), provided that the sender maintains a machine record of the completed transmission.

5.4 **Claims Presentation.** For all claims arising from or related to this Agreement, nothing in this Agreement establishes, waives, or modifies any claims presentation

1 requirements or procedures provided by law, including the Government Claims Act (Division 3.6
2 of Title 1 of the Government Code, beginning with section 810).

3 **Article 6**

4 **Termination and Suspension**

5 **6.1 Termination for Non-Allocation of Funds.** The terms of this Agreement are
6 contingent on the approval of funds by the appropriating government agency. If sufficient funds
7 are not allocated, then the County, upon at least 30 days' advance written notice to the
8 Contractor, may:

9 (A) Modify the services provided by the Contractor under this Agreement; or

10 (B) Terminate this Agreement.

11 **6.2 Termination for Breach.**

12 (A) Upon determining that a breach (as defined in paragraph (C) below) has
13 occurred, the County may give written notice of the breach to the Contractor. The written
14 notice may suspend performance under this Agreement, and must provide at least 30
15 days for the Contractor to cure the breach.

16 (B) If the Contractor fails to cure the breach to the County's satisfaction within the
17 time stated in the written notice, the County may terminate this Agreement immediately.

18 (C) For purposes of this section, a breach occurs when, in the determination of the
19 County, the Contractor has:

20 (1) Obtained or used funds illegally or improperly;

21 (2) Failed to comply with any part of this Agreement;

22 (3) Submitted a substantially incorrect or incomplete report to the County; or

23 (4) Improperly performed any of its obligations under this Agreement.

24 **6.3 Termination without Cause.** In circumstances other than those set forth above, the
25 County may terminate this Agreement by giving at least 30 days advance written notice to the
26 Contractor.

27 **6.4 No Penalty or Further Obligation.** Any termination of this Agreement by the County
28 under this Article 6 is without penalty to or further obligation of the County.

1 Contractor or any other person, and from any and all claims, demands and actions in law or
2 equity (including attorney's fees and litigation expenses), arising or alleged to have arisen
3 directly or indirectly from the negligent or intentional acts or omissions, or willful misconduct of
4 Contractor or any of its officers, officials, employees, agents or volunteers in the performance of
5 this Agreement; provided nothing herein shall constitute a waiver by Contractor of governmental
6 immunities including California Government Code section 810 et seq.

7 8.2 County shall indemnify, hold harmless and defend Contractor and each of its officers,
8 officials, employees, agents and volunteers from any and all loss, liability, fines, penalties,
9 forfeitures, costs and damages (whether in contract, tort or strict liability, including but not
10 limited to personal injury, death at any time and property damage) incurred by the Contractor,
11 County or any other person, and from any and all claims, demands and actions in law or equity
12 (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or
13 indirectly from the negligent or intentional acts or omissions, or willful misconduct of County or
14 any of its officers, officials, employees, agents or volunteers in the performance of this
15 Agreement; provided nothing herein shall constitute a waiver by County of governmental
16 immunities including California Government Code section 810 et seq.

17 8.3 In the event of concurrent negligence on the part of Contractor or any of its officers,
18 officials, employees, agents or volunteers, and County or any of its officers, officials, employees,
19 agents or volunteers, the liability for any and all such claims, demands and actions in law or
20 equity for such losses, fines, penalties, forfeitures, costs and damages shall be apportioned
21 under the State of California's theory of comparative negligence as presently established or as
22 may be modified hereafter.

23 **Article 9**

24 **Insurance**

25 9.1 Without limiting the indemnification of each party as stated herein, it is understood
26 and agreed that County and Contractor shall each maintain, at their sole expense, insurance
27 policies or self-insurance programs including, but not limited to, an insurance pooling
28 arrangement and/or Joint Powers Agreement to fund their respective liabilities including general

1 liability, automotive liability, workers' compensation and employers liability as stated below.
2 Evidence of Insurance, e.g., Certificates of Insurance or other similar documentation, shall be
3 provided at the request of either party under this Agreement.

4 **Article 10**

5 **Inspections, Audits, and Public Records**

6 10.1 **Inspection of Documents.** The Contractor shall make available to the County, and
7 the County may examine at any time during business hours and as often as the County deems
8 necessary, all of the Contractor's records and data with respect to the matters covered by this
9 Agreement, excluding attorney-client privileged communications. The Contractor shall, upon
10 request by the County, permit the County to audit and inspect all of such records and data to
11 ensure the Contractor's compliance with the terms of this Agreement.

12 10.2 **State Audit Requirements.** If the compensation to be paid by the County under this
13 Agreement exceeds \$10,000, the Contractor is subject to the examination and audit of the
14 California State Auditor, as provided in Government Code section 8546.7, for a period of three
15 years after final payment under this Agreement. This section survives the termination of this
16 Agreement. Additional Federal audit requirements may apply if any portion of the compensation
17 to be paid by the County under this Agreement is also provided by Federal funding.

18 10.3 **Public Records.** The County is not limited in any manner with respect to its public
19 disclosure of this Agreement or any record or data that the Contractor may provide to the
20 County. The County's public disclosure of this Agreement or any record or data that the
21 Contractor may provide to the County may include but is not limited to the following:

22 (A) The County may voluntarily, or upon request by any member of the public or
23 governmental agency, disclose this Agreement to the public or such governmental
24 agency.

25 (B) The County may voluntarily, or upon request by any member of the public or
26 governmental agency, disclose to the public or such governmental agency any record or
27 data that the Contractor may provide to the County, unless such disclosure is prohibited
28 by court order.

1 (C) This Agreement, and any record or data that the Contractor may provide to the
2 County, is subject to public disclosure under the Ralph M. Brown Act (California
3 Government Code, Title 5, Division 2, Part 1, Chapter 9, beginning with section 54950).

4 (D) This Agreement, and any record or data that the Contractor may provide to the
5 County, is subject to public disclosure as a public record under the California Public
6 Records Act (California Government Code, Title 1, Division 10, Chapter 1, beginning
7 with section 7920.000) ("CPRA").

8 (E) This Agreement, and any record or data that the Contractor may provide to the
9 County, is subject to public disclosure as information concerning the conduct of the
10 people's business of the State of California under California Constitution, Article 1,
11 section 3, subdivision (b).

12 (F) Any marking of confidentiality or restricted access upon or otherwise made with
13 respect to any record or data that the Contractor may provide to the County shall be
14 disregarded and have no effect on the County's right or duty to disclose to the public or
15 governmental agency any such record or data.

16 **10.4 Public Records Act Requests.** If the County receives a written or oral request
17 under the CPRA to publicly disclose any record that is in the Contractor's possession or control,
18 and which the County has a right, under any provision of this Agreement or applicable law, to
19 possess or control, then the County may demand, in writing, that the Contractor deliver to the
20 County, for purposes of public disclosure, the requested records that may be in the possession
21 or control of the Contractor. Within five business days after the County's demand, the
22 Contractor shall (a) deliver to the County all of the requested records that are in the Contractor's
23 possession or control, together with a written statement that the Contractor, after conducting a
24 diligent search, has produced all requested records that are in the Contractor's possession or
25 control, or (b) provide to the County a written statement that the Contractor, after conducting a
26 diligent search, does not possess or control any of the requested records. The Contractor shall
27 cooperate with the County with respect to any County demand for such records. If the
28 Contractor wishes to assert that any specific record or data is exempt from disclosure under the

1 CPRA or other applicable law, it must deliver the record or data to the County and assert the
2 exemption by citation to specific legal authority within the written statement that it provides to
3 the County under this section. The Contractor's assertion of any exemption from disclosure is
4 not binding on the County, but the County will give at least 10 days' advance written notice to
5 the Contractor before disclosing any record subject to the Contractor's assertion of exemption
6 from disclosure. The Contractor shall indemnify the County for any court-ordered award of costs
7 or attorney's fees under the CPRA that results from the Contractor's delay, claim of exemption,
8 failure to produce any such records, or failure to cooperate with the County with respect to any
9 County demand for any such records.

10 **Article 11**

11 **Disclosure of Self-Dealing Transactions**

12 11.1 **Applicability.** This Article 12 applies if the Contractor is operating as a corporation,
13 or changes its status to operate as a corporation.

14 11.2 **Duty to Disclose.** If any member of the Contractor's board of directors is party to a
15 self-dealing transaction, he or she shall disclose the transaction by completing and signing a
16 "Self-Dealing Transaction Disclosure Form" (Exhibit C to this Agreement) and submitting it to
17 the County before commencing the transaction or immediately after.

18 11.3 **Definition.** "Self-dealing transaction" means a transaction to which the Contractor is
19 a party and in which one or more of its directors, as an individual, has a material financial
20 interest.

21 **Article 12**

22 **General Terms**

23 12.1 **Modification.** Except as provided in Article 6, "Termination and Suspension," this
24 Agreement may not be modified, and no waiver is effective, except by written agreement signed
25 by both parties. The Contractor acknowledges that County employees have no authority to
26 modify this Agreement except as expressly provided in this Agreement.

27 12.2 **Non-Assignment.** Neither party may assign its rights or delegate its obligations
28 under this Agreement without the prior written consent of the other party.

1 12.3 **Governing Law.** The laws of the State of California govern all matters arising from
2 or related to this Agreement.

3 12.4 **Jurisdiction and Venue.** This Agreement is signed and performed in Fresno
4 County, California. Contractor consents to California jurisdiction for actions arising from or
5 related to this Agreement, and, subject to the Government Claims Act, all such actions must be
6 brought and maintained in Fresno County.

7 12.5 **Construction.** The final form of this Agreement is the result of the parties' combined
8 efforts. If anything in this Agreement is found by a court of competent jurisdiction to be
9 ambiguous, that ambiguity shall not be resolved by construing the terms of this Agreement
10 against either party.

11 12.6 **Days.** Unless otherwise specified, "days" means calendar days.

12 12.7 **Headings.** The headings and section titles in this Agreement are for convenience
13 only and are not part of this Agreement.

14 12.8 **Severability.** If anything in this Agreement is found by a court of competent
15 jurisdiction to be unlawful or otherwise unenforceable, the balance of this Agreement remains in
16 effect, and the parties shall make best efforts to replace the unlawful or unenforceable part of
17 this Agreement with lawful and enforceable terms intended to accomplish the parties' original
18 intent.

19 12.9 **Nondiscrimination.** During the performance of this Agreement, the Contractor shall
20 not unlawfully discriminate against any employee or applicant for employment, or recipient of
21 services, because of race, religious creed, color, national origin, ancestry, physical disability,
22 mental disability, medical condition, genetic information, marital status, sex, gender, gender
23 identity, gender expression, age, sexual orientation, military status or veteran status pursuant to
24 all applicable State of California and federal statutes and regulation.

25 12.10 **No Waiver.** Payment, waiver, or discharge by the County of any liability or obligation
26 of the Contractor under this Agreement on any one or more occasions is not a waiver of
27 performance of any continuing or other obligation of the Contractor and does not prohibit
28 enforcement by the County of any obligation on any other occasion.

1 12.11 **Entire Agreement.** This Agreement, including its exhibits, is the entire agreement
2 between the Contractor and the County with respect to the subject matter of this Agreement,
3 and it supersedes all previous negotiations, proposals, commitments, writings, advertisements,
4 publications, and understandings of any nature unless those things are expressly included in
5 this Agreement. If there is any inconsistency between the terms of this Agreement without its
6 exhibits and the terms of the exhibits, then the inconsistency will be resolved by giving
7 precedence first to the terms of this Agreement without its exhibits, and then to the terms of the
8 exhibits.

9 12.12 **No Third-Party Beneficiaries.** This Agreement does not and is not intended to
10 create any rights or obligations for any person or entity except for the parties.

11 12.13 **Authorized Signature.** The Contractor represents and warrants to the County that:

12 (A) The Contractor is duly authorized and empowered to sign and perform its
13 obligations under this Agreement.

14 (B) The individual signing this Agreement on behalf of the Contractor is duly
15 authorized to do so and his or her signature on this Agreement legally binds the
16 Contractor to the terms of this Agreement.

17 12.14 **Electronic Signatures.** The parties agree that this Agreement may be executed by
18 electronic signature as provided in this section.

19 (A) An “electronic signature” means any symbol or process intended by an individual
20 signing this Agreement to represent their signature, including but not limited to (1) a
21 digital signature; (2) a faxed version of an original handwritten signature; or (3) an
22 electronically scanned and transmitted (for example by PDF document) version of an
23 original handwritten signature.

24 (B) Each electronic signature affixed or attached to this Agreement (1) is deemed
25 equivalent to a valid original handwritten signature of the person signing this Agreement
26 for all purposes, including but not limited to evidentiary proof in any administrative or
27 judicial proceeding, and (2) has the same force and effect as the valid original
28 handwritten signature of that person.

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(C) The provisions of this section satisfy the requirements of Civil Code section 1633.5, subdivision (b), in the Uniform Electronic Transaction Act (Civil Code, Division 3, Part 2, Title 2.5, beginning with section 1633.1).

(D) Each party using a digital signature represents that it has undertaken and satisfied the requirements of Government Code section 16.5, subdivision (a), paragraphs (1) through (5), and agrees that each other party may rely upon that representation.

(E) This Agreement is not conditioned upon the parties conducting the transactions under it by electronic means and either party may sign this Agreement with an original handwritten signature.

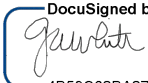
12.15 **Counterparts.** This Agreement may be signed in counterparts, each of which is an original, and all of which together constitute this Agreement.

[SIGNATURE PAGE FOLLOWS]

1 The parties are signing this Agreement on the date stated in the introductory clause.

2
3 City of Fresno
a California municipal corporation

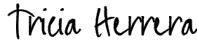
COUNTY OF FRESNO

4 DocuSigned by:

5 _____
Georgeanne A. White, City Manager

Ernest Buddy Mendes, Chairman of the
Board of Supervisors of the County of Fresno

6 2600 Fresno Street
7 Fresno, CA 93721

8 APPROVED AS TO FORM:
9 ANDREW JANZ
City Attorney

10 DocuSigned by:
By: 
11 _____
Tricia Herrera
12 Deputy City Attorney

Attest:
Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

By: _____
Deputy

21 For accounting use only:

22 Org No.: 56204605
23 Account No.: 7295
Fund No.: 0001
24 Subclass No.: 10000

25
26 Attachments:
27 Exhibit A – Scope of Services
28 Exhibit B – Compensation
Exhibit C – Self-Dealing Transaction Disclosure Form

Exhibit A

Scope of Services

The Fresno County Office of Emergency Services (OES) facilitates various emergency response activities when needed through its Emergency Operations Center (EOC), including evacuation of areas impacted by fire, flood, and other imminent threats. Evacuation areas could be located anywhere within Fresno County's boundaries including incorporated cities and the unincorporated area.

In the event of an evacuation order or evacuation warning, the City of Fresno Department of Transportation FAX buses, bus drivers and supervisors may be requested by Fresno County OES to provide transportation to evacuees from the affected area to a designated evacuation shelter or other location identified by OES. Due to the nature of emergency events, this transportation resource may be requested with little or no notice and multiple buses, including wheelchair accessible buses, may be required.

County Responsibilities

If transportation resources are needed to evacuate residents from an area affected by an evacuation order or evacuation warning, OES staff will request FAX assistance as soon as feasible and provide the following information:

- The area(s) being evacuated and the pick-up location(s). Pick-up locations may include residences of individual evacuees.
- The time by which the first bus should arrive at the pick-up location(s) and the time by which the evacuation should be complete.
- An estimated number of evacuees. This number is subject to change as exact numbers of evacuees and their access to personal transportation may be unknown and emergency conditions may change rapidly.
- An estimated number of evacuees requiring a wheelchair accessible bus, if known.
- The location of the designated evacuation shelter or other site where evacuees should be taken.

Exhibit A

1 FAX should anticipate that some evacuees will want to evacuate with their household
2 pets (e.g. dogs, cats, birds, etc. that are not service animals) and allow these pets to travel with
3 their owners provided they are under their owner's control and leashed or in appropriate crates.

4 5 Contractor Responsibilities

6 Upon receiving notification of the need to transport evacuees from an affected area FAX
7 shall notify appropriate FAX personnel in order to provide buses and bus drivers, including
8 handicapped buses, to transport evacuees as requested by OES.

9 As feasible, FAX will provide a sufficient number of buses and drivers to transport all
10 anticipated evacuees from the evacuation area to the designated evacuation shelter or other
11 location as identified by OES staff within the requested time frame.

Exhibit B

Compensation

Contractor charges an hourly service hour rate which includes the cost of bus driver and supervisor, salary, fuel, wear and tear and all other costs associated with use of FAX buses, drivers and supervisors in non-revenue service. This rate is updated by FAX on an annual basis following an evaluation of the operating costs from the prior year.

The County shall reimburse Contractor for its costs as follows:

- For services performed during Fiscal Year 2024-25, the reimbursement rate shall be \$155.04 per service hour.
- For each subsequent fiscal year Contractor shall provide notification to County of the newly established hourly service rate prior to providing services which would be invoiced at the new rate. The Director of the Department of Public Health or his/her designee shall review the new rate and, if approved, shall provide notification of acceptance of the new rate as provided for in Article 5. If the Director does not approve the new rate, this agreement may be terminated as provided for in Article 6.

Exhibit C

Self-Dealing Transaction Disclosure Form

In order to conduct business with the County of Fresno ("County"), members of a contractor's board of directors ("County Contractor"), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the County. A self-dealing transaction is defined below:

"A self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest."

The definition above will be used for purposes of completing this disclosure form.

Instructions

(1) Enter board member's name, job title (if applicable), and date this disclosure is being made.

(2) Enter the board member's company/agency name and address.

(3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:

a. The name of the agency/company with which the corporation has the transaction; and

b. The nature of the material financial interest in the Corporation's transaction that the board member has.

(4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Code.

The form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

Exhibit C

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(1) Company Board Member Information:			
Name:		Date:	
Job Title:			
(2) Company/Agency Name and Address:			
(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to)			
(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code § 5233 (a)			
(5) Authorized Signature			
Signature:		Date:	