

**AGREEMENT FOR SERVICES BETWEEN
THE FRESNO COUNTY RURAL TRANSIT AGENCY AND THE
CITY OF KERMAN**

This AGREEMENT, made and entered into this 1st day of July, 2021 (hereinafter referred to as “Effective Date”) by and between the FRESNO COUNTY RURAL TRANSIT AGENCY, a California joint powers Public Agency (hereafter referred to as "FCRTA"), and the CITY OF KERMAN, a California municipal corporation and general law city (hereafter referred to as "CITY"). FCRTA and CITY are sometimes collectively referred to herein as the “Parties” and individually as a “Party.”

WITNESSETH:

WHEREAS, it is necessary and desirable that CITY contract with FCRTA to provide law enforcement, safety, security, and other services as described in this Agreement to FCRTA vehicles and facilities operating within CITY’S boundaries; and

WHEREAS, FCRTA represents that it is authorized by Section 3 of the Joint Powers Agreement that created FCRTA, which was originally executed on September 27, 1979, to contract for the services to be provided by the CITY under this Agreement; and

WHEREAS, CITY represents that it is authorized by law to provide the services hereinafter described to FCRTA.

NOW, THEREFORE, it is agreed by FCRTA and CITY as follows:

I. CITY’S OBLIGATIONS

A. A police officer employed by CITY shall provide following services to FCRTA at a minimum of one day per week (Monday – Saturday), as selected by CITY:

1. A uniformed officer shall Board the stopped vehicle at any designated bus stop
2. Make visual observations while inside vehicle
3. Greet driver of vehicle
4. Assist passengers or driver with any questions
5. Provide bus shelter safety and security

B. CITY shall complete and submit the FCRTA Police Officer Observation Report attached hereto as Exhibit A and incorporated herein by reference.

C. CITY will make available to FCRTA all documents, studies, or other information in its possession that is not protected by the attorney-client privilege related to the services provided by CITY under this Agreement.

II. FCRTA's OBLIGATIONS

A. FCRTA shall compensate CITY as provided in section III of this Agreement.

B. FCRTA will make available to CITY all documents, studies, or other information in its possession that is not protected by the attorney-client privilege related to the services provided by CITY under this Agreement.

III. COMPENSATION AND INVOICING

A. Notwithstanding any other provision in this Agreement, payment by FCRTA to CITY for the services rendered under this Agreement, shall be limited by an amount not to exceed the sum of \$10,000.00.

B. CITY shall submit two semi-annual invoices to FCRTA. Each invoice shall specify: (1) the total amount previous charged by CITY to FCRTA for services provided under this Agreement; (2) total hours of services rendered during the period covered by the invoice; multiplied by (3) the CITY's approved billing rate of \$69.26 per hour, equaling (4) the amount owed to CITY for the services provided during the period covered by the invoice.

IV. TERMINATION

A. Termination Without Cause.

This Agreement may be terminated without cause at any time by FCRTA or CITY upon thirty (30) calendar days written notice. If either Party terminates this Agreement, CITY shall be compensated for services satisfactorily completed to the date of termination based upon the compensation rates and subject to the maximum amounts payable agreed to in Section III.

B. Breach of Contract.

FCRTA or CITY may suspend or terminate this Agreement in whole or in part, where in the determination of FCRTA or CITY there is:

1. An illegal or improper use of funds;
2. A failure to comply with the terms of this Agreement, and after due notice, failure to cure;
3. Improperly performed services under this Agreement.

4. Failure to pay for services appropriately rendered.

In no event shall any payment by FCRTA constitute a waiver by FCRTA of any breach of this Agreement or any default which may then exist on the part of the CITY. Neither shall such payment impair or prejudice any remedy available to FCRTA with respect to the breach or default.

V. INDEPENDENT CONTRACTOR

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

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

VI. ASSIGNMENT

CITY shall not assign or subcontract its duties under this Agreement without the prior express written consent of the FCRTA. No such consent shall be construed as making the FCRTA a Party to such subcontract, or subjecting the FCRTA to liability of any kind to any subcontractor.

No subcontract whether existing or later entered into as set forth herein, under any circumstances shall relieve CITY of its liability and obligation under this contract, and all transactions with the FCRTA must be through CITY. Subcontractors may not be changed by CITY without the prior express written approval of FCRTA.

VII. BINDING NATURE OF AGREEMENT; MODIFICATION

The Parties agree that all of the terms of this Agreement shall be binding upon them and that together these terms constitute the entire Agreement of the Parties with respect to the subject matter hereof. No variation or modification of this Agreement and no waiver of any of its

provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Parties. This Agreement shall be binding upon FCRTA, CITY, and their successors in interest, legal representatives, executors, administrators, and assigns with respect to all covenants as set forth herein.

VIII. INDEMNITY

The CITY and FCRTA (hereafter individually referred to as a “PARTY”) shall hold harmless, and indemnify the other PARTY and its respective governing board, officers, directors, employees, authorized agents, contractors or subcontractors from and against any and all claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys’ and expert witness fees and costs) that arise out of or as a result of any negligent act or omission or willful misconduct of the indemnifying PARTY or its governing board, officers, directors, employees, authorized agents, contractors or subcontractors in carrying out the indemnifying PARTY’s obligations under this Agreement, except to the extent that such expense, liability or claim is proximately caused by the negligence or willful misconduct of the PARTY indemnified or its governing board, officers, directors, employees, authorized agents, contractors or subcontractors.

IX. NON DISCRIMINATION AND DBE

CITY shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CITY shall carry out all applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the CITY to carry out these requirements is a material breach of this contract, which may result in the termination of this contract and such other remedy as the recipient deems appropriate.

X. INSURANCE

Without limiting either Parties right to obtain indemnification, CITY shall require its subcontractors, at their sole expense to maintain in full force and effect the following insurance policies throughout the term of this Agreement:

- A. General liability insurance with coverage of not less than \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If the Commercial General Liability Form or any other policy with a general aggregate limit is used, either the aggregate limit shall be endorsed to apply separately to this project or the aggregate limit shall be twice the above occurrence limit.
- B. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.

- C. Automobile Physical Damage: Subject to existing law, collision and other types of physical damage coverage, including repair or replacement with comparable equipment.
- D. The above liability limits may consist of a combination of a primary policy limit and an excess policy limit to total at least \$1,000,000.
- E. Workers compensation insurance as required by law.

General liability insurance policies shall name the FCRTA, its officers, 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 FCRTA, its officers, agents, and employees, shall be excess only and not contributing with insurance provided under the CITY's subcontractors policies herein.

CITY shall not cancel or change any insurance policy required by this Agreement without a minimum of thirty (30) days advance, written notice given to FCRTA.

CITY shall provide certification of all insurance policies required by this Agreement to FCRTA within twenty-one (21) days of the date of the execution of this Agreement.

XI. CONFLICT OF INTEREST

CITY and FCRTA covenant they have no interest, and will not have any interest, direct or indirect, which would conflict in any manner with the performances of the services required hereunder.

XII. EFFECTIVE DATE, TERM

This Agreement shall become effective as of the Effective Date above and shall remain in full force and effect through June 30, 2022, unless sooner terminated or unless its term is extended. Upon the mutual written Agreement of the Parties hereto, this Agreement may be extended beyond that date.

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XIII. NOTICES

Any and all notices between FCRTA and the CITY provided for or permitted under this Agreement or by law shall be in writing and shall be deemed duly served when personally delivered to one of the Parties, or in lieu of such personal service, when deposited in the United States Mail, postage prepaid, addressed to such Party, at such addresses set forth below:

FCRTA

Moses Stites, General Manager
Fresno County Rural Transit Agency
2035 Tulare, Suite 201
Fresno, CA 93721

CITY

John Jansons, City Manager
City of Kerman
850 S. Madera St.
Kerman, CA 93630

For all claims arising out of or related to this Agreement, nothing in this section establishes, waives, or modifies, any claims presentation requirements or procedures provided by law, including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code, commencing with section 810).

XIV. VENUE; GOVERNING LAW

Venue for any claim or action arising under this Agreement shall be in Fresno County, California. This Agreement shall be governed in all respects by the laws of the State of California.

XV. LEGAL AUTHORITY

Each Party represents and warrants to the other Party that such Party is duly authorized and empowered to execute, enter into, and perform its obligations set forth in this Agreement, and that the individual signing this Agreement on behalf of such Party has been duly authorized to execute this Agreement on behalf of such Party, and will, by signing this Agreement on such Party's behalf, legally bind such Party to the terms, covenants, and conditions of this Agreement. Each Party further represents and warrants to the other Party that no other person or entity is required to give its approval or consent to this Agreement in order for such Party to authorize, enter into, and perform its obligations under this Agreement, or that if such approval or consent to this Agreement is required, that such approval or consent has been obtained.

XVI. DRUG FREE WORK PLACE

CITY and FCRTA shall certify compliance with Government Code Section 8355 pertaining to providing a drug-free workplace per Exhibit B - "Drug Free Workplace Certification".

XVII. FEDERAL FUNDS

CITY and FCRTA shall acknowledge the participation of federal funds in this PROJECT by causing to have printed on the cover page of any final document provided subsequent

to this Agreement, “The preparation of this report has been financed in part through grants from the United States Department of Transportation.”

XVIII. REPRESENTATION BY COUNSEL

Each Party acknowledges that it has had the opportunity to be represented by counsel in connection with this Agreement and the transactions contemplated by this Agreement.

XIX. CONSTRUCTION OF AGREEMENT

The Parties hereby acknowledge that they and their respective counsel have cooperated in the drafting and preparation of this Agreement, for which reason this agreement shall not be construed against any Party as the drafter thereof.

XX. NO THIRD-PARTY BENEFICIARIES

Notwithstanding anything else to the contrary herein, the Parties acknowledge and agree that no other person, firm, corporation, or entity shall be deemed an intended third-party beneficiary of this Agreement.

XXI. COMPLETE AGREEMENT

This Agreement represents the full and complete understanding of the parties with respect to the subject matter hereof, and all preliminary negotiations and oral or written agreements with respect thereto are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by a written instrument signed by both Parties. No waiver of any provision of this Agreement will be valid unless and until it is in writing and signed by the Party making the waiver. Waiver by either Party at any time of a breach or default of this Agreement shall not be deemed a waiver of or consent to a breach or default of the same or any other provision of this Agreement.

XXII. ASSIGNMENT/TRANSFER

No assignment or transfer in whole or in part of this Agreement shall be made without the prior written consent of the FCRTA.

(Signature page follows.)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date and year first above written.

FRESNO COUNTY RURAL TRANSIT

By _____
MOSES STITES, General Manager

CITY OF KERMAN

By _____
JOHN JANSONS, City Manager

APPROVED AS TO LEGAL FORM ON BEHALF OF FCRTA:
DANIEL C. CEDERBORG, County Counsel

E-Signed by
Bryan D. Rome
By *Bryan D. Rome* on June 14, 2021
BRYAN ROME, Deputy County Counsel

APPROVED AS TO LEGAL FORM ON BEHALF OF CITY:

By _____
KERMAN CITY ATTORNEY