

AGREEMENT NO.

INTERGOVERNMENTAL AGREEMENT

**CITY OF PHOENIX
AND
CITY OF TEMPE**

(Regional Transit Operations Support Services)

THIS INTERGOVERNMENTAL AGREEMENT is made and entered into this ____ day of _____, 2012, by and between the City of Phoenix, a municipal corporation duly organized and existing under the laws of the State of Arizona acting by and through its Public Transit Department (hereinafter referred to as "Phoenix") and the City of Tempe, a municipal corporation duly organized and existing under the laws of the State of Arizona (hereinafter referred to as "Tempe").

WHEREAS, Phoenix has Charter authority to provide transit services and Charter and Statutory authority to enter into Agreements with other entities within the Phoenix Urban Area to provide transit services [A.R.S. § 11-951, et seq.; Chapter 2, Section 2, Subsections (c), (i) and (l), Charter of the City of Phoenix, 1969]; and,

WHEREAS, Tempe has broad Charter and statutory authority to engage in all of the activities and endeavors allowed under the laws of the state of Arizona and to enter into intergovernmental agreements with other governmental entities (Article I, Section 1.01 and Article I, Section 1.03, Charter of the City of Tempe; A.R.S. Section 11-951, et seq.); and,

WHEREAS, Tempe desires to contract with Phoenix for certain regional transit operations support services described herein; and,

WHEREAS, Phoenix, in an effort to further its regional transportation mission, is ready, willing and able to provide such functions to Tempe; NOW THEREFORE,

IT IS HEREBY AGREED, by and between the parties, as follows:

SECTION 1. PHOENIX SERVICES PROVIDED TO TEMPE. Phoenix shall provide regional transit operations support services work. Specifically, Phoenix shall perform the following functions on behalf of Tempe:

- A. Regional fare media distribution

- B. Fixed route operations and support, including,
 - 1) Service planning and scheduling;
 - 2) Vehicle management system maintenance and support;
 - 3) Fare collection system support;

Section 2. COST ALLOCATION AND CHARGES TO TEMPE.

The costs of regional fare media distribution will be allocated and charged monthly by Phoenix to Tempe based on budgeted costs and monthly pass usage by customers of Tempe. The costs of fixed route operations support services will be allocated and charged monthly based upon budgeted costs and fixed route revenue miles. Reconciliations will be completed by the City after the end of each fiscal year to account for the differences in budgeted and actual costs. Based on the results of the reconciliations, a credit or additional billing, as applicable, will be issued.

Estimated 2011-12 Regional Support Services Costs:

Regional Fare Media Distribution	\$171,000
Fixed Route Operations Support	<u>\$316,035</u>
Total	\$487,035

Tempe shall pay Phoenix for its share of regional operations support services costs ("Regional Services Costs") that shall become due within thirty (30) calendar days after the receipt and acceptance of Phoenix's invoice.

Section 3. TERM OF SERVICES. The services provided in this agreement shall have commenced on July 1, 2011, and shall terminate of June 30, 2016, unless terminated earlier by one of the parties in accordance with Section 6(G) hereof.

Section 4. UNRESOLVED ISSUES. The parties recognize that, although this Agreement is intended to cover many of the issues associated with the responsibilities for regional services, issues may, and likely will, arise that are not covered herein. In that regard, any issues not covered and resolved by this Agreement shall be promptly addressed by the parties as they arise.

Section 5. INDEMNIFICATION. Each party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

Section 6. GENERAL PROVISIONS. The following provisions are material to Phoenix's entry into this Agreement and any deviation from the requirements thereof shall be deemed a material breach of contract.

- A. **Assignability; Successors and Assigns.** This Agreement, and any rights or obligations hereunder, shall not be transferred or assigned by Tempe without the prior written consent of Phoenix. Any attempt to assign without such prior written consent shall be void.

- B. **Employment and Organization Disclaimer; Independent Contractor Status.** This Agreement is not intended to, and will not, constitute, create, give rise to, or otherwise recognize a joint venture, partnership, or formal business association or organization of any kind as existing between the parties, and the rights and the obligations of the parties shall be only those expressly set forth herein. The parties agree that no person supplied by Phoenix in the performance of Phoenix's obligations under this Agreement are Tempe employees, and that no rights under Tempe's Civil Service, retirement, or personnel rules accrue to such persons. Phoenix shall have sole and total responsibility for all salaries, wages, bonuses, retirement, withholding, workers' compensation, occupational disease compensation, unemployment compensations, other employee benefits, and all taxes and premiums appurtenant thereto concerning such persons used by it in the performance of this Agreement, and Phoenix shall save and hold Tempe harmless with respect thereto.

Further, it is understood and agreed by the parties that Phoenix is, and shall remain, an independent contractor under this Agreement. Neither party is the agent of the other and neither party is authorized to act on behalf of the other party.

- C. **Conflicts of Interest.** All parties hereto acknowledge that this Agreement is subject to cancellation by the parties pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

- D. **Inspection and Audit.** The provisions of Section 35-214, Arizona Revised Statutes, shall apply to this Agreement. Tempe shall perform the inspection and audit function specified therein at its expense.

- E. **Continuation of Work During Disputes.** Notwithstanding the existence of any dispute between the parties, Phoenix shall continue to perform its obligations under this Agreement during the continuation of such dispute unless such performance is refused by Tempe or is enjoined or prohibited by an Arizona court of competent jurisdiction.

- F. **Iran and Sudan.** Pursuant to A.R.S. §§ 35-391.06 and 35-393.06, Phoenix and Tempe certify that neither has a scrutinized business operation, as defined in A.R.S. §§ 35-391 and 35-393, in either Iran or Sudan.

- G. **Termination.** Either party may, at its option, sole and unfettered discretion, terminate or abandon the service to be provided under this Agreement, or any part thereof, with or without cause, upon not less than one hundred twenty (120) days prior written notice to the other.

When notice of termination is received, the parties shall immediately consult with one another as to the physical assets then on hand, the goods and materials then on order, to create a transition plan (which plan shall include, as necessary, the transfer of and the compensation for assets and the placement, if necessary, of personnel). After such consultation, the parties shall take whatever action is necessary to effectuate the transition plan.

- H. **Invalidity of Any Provisions.** This Agreement shall remain in full force and effect even if one or more of its terms or provisions have been held to be invalid or unenforceable. Such a holding shall result in the offending term or provision being ineffective to the extent of its invalidity or unenforceability without invalidating the remaining terms and provisions hereof; this Agreement shall thereafter be construed as though the invalid or unenforceable term or provision were not contained herein.

- I. **Confidentiality and Data Security.** Personal identifying information, financial account information, or restricted Phoenix or Tempe information, whether electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access. At a minimum, the parties must encrypt and/or password protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices.

When personal identifying information, financial account information, or restricted Phoenix or Tempe information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed.

In the event that data collected or obtained by the parties in connection with this Agreement is believed to have been compromised, that party shall notify the other party immediately. The party at fault agrees to reimburse the other party for any costs incurred by that party to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach.

Phoenix agrees that the requirements of this Section shall be incorporated into all subcontractor/subconsultant agreements entered into by Phoenix. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice.

The obligations of the parties under this Section shall survive the termination of this Agreement.

- J. **Legal Worker Requirements.** The parties are prohibited by A.R.S. § 41-4401 from entering into an agreement with any contractor who fails, or whose

subcontractors fail, to comply with A.R.S. § 23-214(A). Therefore, contractor agrees that:

1. Phoenix and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214, subsection A.

2. A breach of warranty under paragraph 1 shall be deemed a material breach of the Agreement and is subject to penalties up to and including termination of the Agreement.

3. The parties retain the legal right to inspect the papers of each other or the Phoenix's subcontractor employee(s) who work(s) on this Agreement to ensure that contractor or subcontractor is complying with the warranty under paragraph 1.

K. **Compliance with Laws, Permits and Indemnity.** Phoenix shall comply with all applicable laws, ordinances, regulations and codes of federal, state and local governments. Further, Phoenix shall be solely responsible for obtaining all approvals and permits necessary to perform the work called for under this Agreement.

Phoenix shall indemnify, defend, save and hold harmless Tempe from all loss, cost and damage by reason of any violation of the provisions of this paragraph and from any liability including, but not limited to, fines, penalties and other costs arising therefrom.

L. **Compliance with the Immigration Reform and Control Act of 1986 (IRCA).** Phoenix understands and acknowledges the applicability of the IRCA to it. Phoenix shall comply with the IRCA in performing this Agreement and shall permit TEMPE to verify such compliance.

M. **Non-waiver.** Should either party fail or delay in exercising or enforcing any right, power, privilege or remedy under this Agreement such failure or delay shall not be deemed a waiver, release or modification of the requirements of this Agreement or of any of the terms or provisions thereof.

N. **Notice.** Any notice, consent, or other communication ("NOTICE") required or permitted under this Agreement shall be in writing and either delivered in person, sent by facsimile transmission, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, or deposited with any commercial air courier or express service addressed as follows:

If intended for TEMPE:

Greg Jordan
Interim Deputy Public Works Director
200 East Fifth Street
Tempe, AZ 85281
Telephone: (480) 350-2775
FAX: (480) 858-2097

If intended for PHOENIX:

Neal Young
Interim Public Transit Director
302 N. 1st Avenue
Phoenix, AZ 85003
Telephone: (602) 262-7242
FAX: (602) 495-2002

Notice shall be deemed received at the time it is personally served or, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express service or, if mailed, ten (10) days after the notice is deposited in the United States mail as above provided. Any time period stated in a notice shall be computed from the time the notice is deemed received. Either party may change its mailing address, FAX number, or the person to receive notice by notifying the other party as provided in this section.

Notice sent by facsimile transmission shall also be sent by regular mail to the recipient at the above address. This requirement for duplicate notice is not intended to change the effective date of the notice sent by facsimile transmission.

Section 7. EFFECTIVE DATE. In accordance with the provisions of A.R.S. § 11-952(G), this Agreement shall be effective upon execution.

THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties have executed this Intergovernmental Agreement on the day and year first above written.

CITY OF PHOENIX, a municipal corporation

DAVID CAVAZOS, City Manager

ATTEST:

By _____
Neal Young, Interim Public Transit Director

City Clerk

APPROVED AS TO FORM:

Acting City Attorney

CITY OF TEMPE, a municipal corporation

ATTEST:

By: _____
Hugh Hallman, Mayor

Tempe City Clerk

APPROVED AS TO FORM:

Tempe Attorney

INTERGOVERNMENTAL AGREEMENT DETERMINATION

In accordance with the requirements of § 11-952(D), Arizona Revised Statutes, each of the undersigned attorneys acknowledge: (1) that they have reviewed the above Agreement on behalf of their respective clients; and, (2) that, as to their respective clients only, each attorney has determined that this Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

Attorney for PHOENIX

Attorney for TEMPE