

**CITY OF TEMPE AND ARIZONA STATE UNIVERSITY  
FY 2014-15 TRANSIT SERVICE AGREEMENT  
(The "Agreement")**

BETWEEN: The City of Tempe, a Municipal Corporation (hereinafter referred to as the "CITY")

AND: The Arizona Board of Regents for an on behalf of Arizona State University (hereinafter referred to as "ASU").

WHEREAS: ASU is authorized to enter into contracts under A.R.S. Section 15-1625. The City is authorized to enter into this contract under A.R.S. Section 40-1152; and

WHEREAS: The CITY is authorized to contract for the provision of public transportation services pursuant to the City of Tempe Code; and

WHEREAS: The CITY and ASU desire to provide a local public transportation system that facilitates alternative means of transportation across the City of Tempe and in and around the ASU Tempe Campus.

WHEREAS: CITY has been authorized by its CITY Council and ASU has authorization to enter into this Agreement; and

WHEREAS: The CITY, a municipal corporation, and ASU, a public body corporate, have authority in accordance with A.R.S. Section 11-952 to enter into intergovernmental agreements.

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

**DEFINITIONS:**

FLASH Bus Service: As described in Schedule A, (as may be amended with mutual written consent of the City and ASU from time to time during the term of this Agreement), means a downtown Tempe/campus circulator transport system intended for use by ASU students, staff, and visitors having business on or around the downtown Tempe/ASU campus as well as any member of the public requiring localized transport in the downtown Tempe/ASU campus area.

Orbit Bus Service: As described in Schedule B, (as may be amended with mutual written consent of the City and ASU from time to time during the term of this

Agreement), means a neighborhood transport system intended for use by Tempe residents or any member of the public requiring localized transport in the downtown Tempe/ASU campus area or other serviced commercial districts.

Transit stop: any location or structure and any ancillary facilities the purpose of which is to enable passengers to board or alight from transit vehicles.

#### SECTION 1: SERVICE AREA AND TRANSIT SERVICES

The geographic boundaries of the CITY which are lawfully in effect on the commencement date of this agreement shall designate and define the limits of the service area for the purposes of the Agreement, and the services specified in Schedule A & B shall be operated during the term of this Agreement.

#### SECTION 2: TERM AND RENEWAL

This Agreement shall commence as of July 1, 2014, and shall terminate on June 30, 2019, unless terminated earlier by one of the parties, in which case, written notice of termination shall be required no less than thirty (60) days prior to the proposed termination date. Funding levels for this agreement shall be determined annually and shall be incorporated into this Agreement through the amendment of Schedule C.

#### SECTION 3: CITY RESPONSIBILITY

- 3.1 Will consult with ASU on planning, design, scheduling, and operation of all bus services described hereunder. City will provide professional staff, as requested, to assist ASU in developing, evaluating and adjusting services and/or capital facilities.
- 3.2 Coordinate the negotiation of agreements for the provision of transit service specifically designated hereunder.
- 3.3 Provide administrative services, equipment, personnel and management services necessary to provide ASU with FLASH and Orbit bus services specifically designated hereunder. FLASH and Orbit bus services will be delivered by independent contractor(s) pursuant to City contract. The Contractor shall be duly qualified, licensed, trained, and have adequate equipment to perform services under this Agreement.
- 3.4 At the end of the fiscal year, a final reconciliation will be performed by the City and submitted to the ASU. The City shall use its best effort to submit the final reconciliation within sixty (60) calendar days of the end of the fiscal year. If it is found that ASU has paid more than its share of the costs of service, the City shall refund such overpayment to ASU within thirty (30) days of delivering the reconciliation notice to ASU.

- Conversely, if ASU has underpaid its share of the costs of services, ASU shall pay the City such underpayment within (30) days of receipt of reconciliation notice.
- 3.5 Develop annual operating budgets for the provision of FLASH Bus and Orbit Services hereunder.
  - 3.6 Recommend (subject to ASU approval) functional standards for construction and establishment of transit stops and capital projects, such as park and ride and transit exchange facilities that are on ASU property. Provided, however, ASU shall not be bound by such recommendation and shall act upon its independent judgment and discretion in accordance with all federal, state, and local laws pertaining to transit access and services.
  - 3.7 Provide marketing of FLASH bus service provided hereunder.
  - 3.8 City will provide upon request reports on ridership, applicable performance standards, and reasonable financial and operational data to ASU with respect to all bus services provided hereunder.
  - 3.9 For additional services requested by the City in excess of the bus services specifically stated hereunder or defined by subsequent amendment proposed by the City for additional city service, the City shall absorb one-hundred percent of expenses actually incurred by the City in the operation of additional bus service requested by the City.
  - 3.10 The City shall provide and maintain transit stop amenities within its right-of-way consistent with its transit policies and standards as well as all applicable local, state, and federal laws and regulations.
  - 3.11 The City shall comply with all applicable laws, ordinances, regulations and codes of the federal, state and local governments.
  - 3.12 To the extent required by Section 35-214 of the Arizona Revised Statutes, City agrees to retain all records relating to this Agreement. City agrees to make those records available at all reasonable times for inspection and audit by ASU or the Auditor General of the State of Arizona during the term of this Agreement and for a period of five (5) years after the completion of this Agreement. The records shall be provided at Arizona State University, Tempe, Arizona, or another location designated by ASU upon reasonable notice to City.

#### SECTION 4: ASU RESPONSIBILITY

- 4.1. It is ASU's sole responsibility to review, approve or modify as appropriate any recommendation of the City hereunder, including (but not limited to) any

recommendation concerning transit stops, pedestrian control, and traffic control within ASU right-of-way.

- 4.2. With respect to services provided hereunder, ASU shall provide traffic control and transit priority measures such as turning movements on ASU streets to facilitate efficient and safe bus operations.
- 4.3. ASU shall pay the “total net cost” of bus services to the City semi-annually, in accordance with Schedule C, for its share of expenses incurred by the City in the operation of bus services described hereunder.
- 4.4. ASU is responsible for making semi-annual payments on or before August 1 and February 1 of each fiscal year as set forth on Schedule C, and as amended each fiscal year thereafter.
- 4.5. For additional public transit services requested by ASU in excess of the bus services specifically stated hereunder or defined by subsequent amendment proposed by ASU, ASU shall pay the City one-hundred percent of expenses incurred by the City in the operation of additional bus services requested by ASU.
- 4.6. ASU shall provide a written request sixty (60) calendar day notice for major service changes.
- 4.7. ASU shall provide and maintain transit stop amenities within its right-of-way consistent with its transit policies and standards as well as all applicable local, state, and federal laws and regulations.
- 4.8. ASU shall comply with all applicable laws, ordinances, regulations and codes of the federal, state and local governments.

## SECTION 5: Miscellaneous

### 5.1 Covenant Against Contingent Fees

Both parties warrant that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; to the actual knowledge of the person signing this Agreement, no employee of their respective employers or governing board has any financial interest in the Agreement.

### 5.2 Alteration in Character of Work

Minor alterations resulting in no additional cost as determined by the City in the character of work shall be authorized in writing by ASU and acknowledged by CITY by letter.

5.3 Advertising

No advertising shall be allowed on FLASH or Orbit vehicles.

5.4 Charter Use of System Vehicles

Any charter use of any system vehicles used in the course of implementing the Agreement is subject to agreement of the parties and applicable FTA guidelines.

5.5 Termination

The City and ASU hereby agree to full performance of the covenants and obligations contained herein, except that each reserve the right, at its option and sole discretion, to terminate or abandon the service provided for in this Agreement, or any portion thereof.

Termination of this Agreement may be at any time and for any reason, with or without cause, upon providing thirty (30) calendar days prior written notice. Termination shall be effected by delivery of a Notice of Termination specifying the extent to which performance of work under the Agreement is terminated, and the date upon which such termination becomes effective.

Upon termination, the City shall calculate actual expenses incurred up to and including the date of termination together with any penalty or costs imposed by other funding sources and any costs attributing to Section 13(c) of the Federal Transit Act of 1964, as amended, the total of which is hereinafter referred to as "termination costs." If ASU has paid the City sums in excess of the termination costs, City shall refund the excess to ASU; if ASU has paid the City an amount less than the termination costs, then ASU shall pay to the City an amount equal to the difference between the termination costs and the amount that ASU has already paid under this Agreement.

5.65 Additional Work

Additional work may be provided under this Agreement when authorized by written mutual agreement and shall be compensated for by a fee, mutually agreed upon by both parties.

5.76 Successors and Assigns

This Agreement shall not be assignable, except at the written consent of the parties hereto; and it shall extend to and be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

5.8 Nondiscrimination

The parties agree to comply with all applicable state and federal laws, rules, regulations and executive orders governing equal employment opportunity, immigration, nondiscrimination, including the Americans with Disabilities Act, and affirmative action.

SECTION 6: INDEMNIFICATION

Each party to this Agreement agrees to defend, indemnify, save and hold harmless the other (and each of their respective directors, officers, agents and employees) from and against all liabilities, suits, obligations, claims, demands, damages, fines, costs and expenses (including reasonable attorney's fees) arising under this Agreement to the extent that such are attributable, directly or indirectly, to the indemnifying party's negligence, error, omission or intentional act. An indemnifying party's negligence, error, omission or intentional act, as that phrase is used herein, includes the negligence, error, omission or intentional act of its officers, agents and employees. This provision shall survive the termination of this Agreement.

SECTION 7: AMENDMENT

This Agreement may be amended in whole or in part by written agreement of the parties.

SECTION 8: RELATIONSHIP OF PARTIES

Each party to this Agreement shall act in its individual capacity and not as an agent, employee, partner, joint venturer, associate, or any other representative capacity of the other. Each party shall be solely and entirely responsible for its acts or the acts of its agents and employees during the performance of this Agreement.

SECTION 9: INTEGRATION

This Agreement represents the entire agreement of the parties with respect to the subject matter hereof, and all agreements entered into prior hereto with respect to the subject matter hereof are revoked and superseded by this Agreement, and no representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in other contemporaneous written agreements. This Agreement may not be changed, modified or rescinded except in writing, signed by all parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.

SECTION 10: ATTORNEYS' FEES

In the event suit is brought to enforce the terms of this Agreement or to collect any moneys due hereunder, or to collect money damages for breach hereof, the prevailing party shall be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith.

SECTION 11: SEVERABILITY

If any provision of this Agreement is declared void or unenforceable, such provision shall be deemed severed from this Agreement, which shall otherwise remain in full force and effect.

SECTION 12: NO ASSIGNMENT

This Agreement is personal to each of the parties hereto, and neither party may assign or delegate any of its rights or obligations hereunder without first obtaining the written consent of the other; provided, however, that the City may assign its rights and delegate its obligations hereunder to a successor in interest without obtaining such consent.

SECTION 13: WAIVER

Failure of any party to exercise any right or option arising out of a breach of this Agreement shall not be deemed a waiver of any right or option with respect to any subsequent or different breach, or the continuance of any existing breach.

SECTION 14: COUNTERPARTS

This Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, and each of said counterparts shall be deemed an original hereof.

SECTION 15: CAPTIONS

Captions and section heading used herein are for convenience only and are not a part of this Agreement and shall not be deemed to limit or alter any provisions hereof and shall not be deemed relevant in construing this Agreement.

SECTION 16: CANCELLATION

This Agreement is subject to cancellation pursuant to A.R.S. Section 38-511.

This Agreement shall be in full force and effect after it has been approved by the City Council of the City of Tempe, after it has been executed by the duly authorized officials of the parties and after it has been filed with the County Recorder and the Secretary of State if necessary as provided by A.R.S. Section 11-952.

SECTION 17: FAILURE OF LEGISLATURE TO APPROPRIATE

If ASU's performance under this Agreement depends upon the appropriation of funds by the Arizona Legislature, and if the Legislature fails to appropriate the funds necessary for performance, then ASU may provide advance written notice of this to City at least 30 days) and cancel this Agreement without further obligation of ASU. Appropriation is a legislative act and is beyond the control of ASU. ASU will be responsible for actual expenses incurred per the terms of the Agreement through the official cancellation date.

SECTION 18: NOTICES

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 to the City:

City of Tempe  
Transit Division  
200 East Fifth Street

Tempe, AZ 85281  
(Attention: Shelly Seyler, Deputy Public Works Director, Transportation)

If to ASU:

Arizona State University  
Parking and Transit Services  
P.O. Box 875205  
Tempe, Arizona 85287-5205  
(Attention: Judi Nelson, Program Manager)

Notices shall be deemed received at the time it is personally served, 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 or the person to receive Notice by notifying the other Party as provided in this paragraph. Notices 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.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the \_\_\_\_\_ day  
of \_\_\_\_\_, 2014.

CITY OF TEMPE, ARIZONA

ARIZONA BOARD OF REGENTS for and on  
behalf of ARIZONA STATE UNIVERSITY

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Mark W. Mitchell  
Mayor

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John Riley  
Executive Director Purchasing  
University Business Services

The above Agreement has been reviewed pursuant to A. R. S. § 11-952, by the undersigned attorney for the City of Tempe, Arizona who has determined that it is in the proper form and is within the powers and authority granted to the City of Tempe, Arizona.

The above Agreement has been reviewed pursuant to A. R. S. § 11-952, by the undersigned attorney for Arizona State University who has determined that it is in the proper form and is within the powers and authority granted to Arizona State University.

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Judith R. Baumann  
City Attorney  
City of Tempe

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Lisa Loo  
Deputy General Counsel  
Arizona State University

ATTEST

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Brigitta M. Kuiper  
City Clerk  
City of Tempe

## SCHEDULE A -

### OBJECTIVES AND DESCRIPTION OF FLASH BUS SERVICES

The City of Tempe will provide FLASH bus services to the ASU campus and downtown Tempe community to achieve the following objectives:

- To provide mobility to ASU staff, faculty, students, and visitors in and around the ASU campus and downtown Tempe community;
- To provide mobility to downtown Tempe visitors, residents, and employees in and around the ASU campus and downtown Tempe community;
- To reduce the use of private automobiles for as many trips as possible, thus minimizing congestion and air pollution;
- To provide connections to local, express, Orbit, and light rail services.

#### *Description of FLASH Bus Services:*

##### **FLASH Forward:**

- Provides clock-wise circulation from Packard Dr. and Rio Salado Pkwy. to McAllister Ave., to Apache Blvd, to Student Services/Gammage Auditorium, to Mill Avenue, to University Dr., to Packard Dr. and Rio Salado Pkwy..
- Regular hours of operation (Fall and Spring Semester) will be from 7:00 AM to 1:00 AM Monday through Thursday and 7:00 AM to 10:00 PM on Friday.
- Semester break hours will be from 7:00 AM to 6:00 PM Monday through Friday. Break hours are based on the ASU calendar of events.
- Buses will operate on a frequency between ten (10) and fifteen (15) minutes.

##### **FLASH Back:**

- Provides counter clock-wise circulation from Packard Dr. and Rio Salado Pkwy. to University Dr., to Mill Avenue, to Student Services/Gammage Auditorium, to Apache Blvd, to McAllister Ave., to Packard Dr. and Rio Salado Pkwy.
- Regular hours of operation (Fall and Spring Semester) will be from 7:00 AM to 6:00 PM Monday through Friday.
- Semester break hours will be from 7:00 AM to 6:00 PM Monday through Friday. Break hours are based on the ASU calendar of events.
- Buses will operate on a frequency between ten (10) and fifteen (15) minutes.

##### **McAllister FLASH (Map 2):**

- Provides linear circulation along Packard Dr. and McAllister Ave. between Packard Dr. and Rio Salado Pkwy. and the South Campus Housing area south of Apache Blvd. between McAllister Ave. & Rural Rd.
- Regular hours of operation are 6:00am to 10:00pm on school days only during the fall and

spring semesters. No service shall be provided on weekends, designated ASU holidays, or during winter or summer sessions.

- Bus will operate on a 30-minute frequency

### **Equipment**

- The CITY will provide sufficient fleet to meet service supply as specified in Schedule C.
- Buses operating FLASH bus services may utilize liquid natural gas (LNG), Compressed Natural Gas (CNG) or Diesel fuel as part of an electric-hybrid propulsion system.
- Each vehicle will be equipped with wheelchair ramps, front mounting bicycle racks, at least two wheelchair securement areas, air conditioning, destination signs and each will meet ADA requirements.
- The vehicles used for this service will be a part of the Valley Metro local route fleet and will display Valley Metro branding.

## **SCHEDULE B - OBJECTIVES AND DESCRIPTION OF ORBIT BUS SERVICES**

The City of Tempe will provide **Orbit Mars** Neighborhood Circulator Service adjacent to ASU office facilities and area student housing. Tempe's and ASU's objectives for this partnership include the following:

- To provide mobility to Tempe residents living in neighborhoods across the city as well as downtown Tempe visitors, residents, and employees in and around the ASU campus and downtown Tempe community;
- To provide mobility to ASU staff, faculty, students, and visitors in and around the ASU campus and downtown Tempe community;
- To reduce the use of private automobiles for as many trips as possible, thus minimizing congestion and air pollution;
- To provide connections to local, express, Orbit, and light rail services.

Orbit Mars is a fare-less service that uses mini-buses to serve residential areas and connect them to local destinations such as shopping areas, other neighborhoods, major bus routes, schools and multi-generational centers. Most Orbit routes operate:

- Monday through Friday from 6 a.m. to 10 p.m. every 15 minutes
- Saturday from 8 a.m. to 10 p.m. every 15 minutes
- Sundays and designated holidays from 8 a.m. to 7 p.m. every 30 minutes

Orbit routes use "flag" stops, which means that the driver will pick up and drop off passengers in residential neighborhoods provided it is safe to do so. Passengers should wave at the driver to let

him or her know that they would like picked up.

On arterial streets (e.g., Mill Avenue, University Drive, Broadway Road) designated bus stops should be used. The Orbit will only stop at designated bus stops.. To de-board the bus in a neighborhood, passengers should pull the cord located near the windows.

**Mars** - travels between downtown Tempe and the east city border via College Ave., University Dr., Terrace Rd., Spence Ave., Rural Rd., Vista del Cerro Dr., Dorsey Ln., Alameda Dr., Del Rio Dr., Los Feliz, Alameda Dr., Country Club Way, Southern, Evergreen, Malibu Dr. George Dr.

### SCHEDULE C - SCHEDULE OF COSTS (FY 2014-15)

FY 2015 ESTIMATED Mileage/Cost Detail (July 1, 2014 - June 30, 2015)													
Mode	Miles	Contract Var. Cost	Contract Fixed Cost	Contractor Incentive	Fuel Cost	Facilities Cost	Depreciation Cost	Mntmce Agrmnts	RPTA Admin O.H.	Gross Cost	Credits PM	Net Cost	
Flash (Incl. McAlister)	141,184	\$ 573,207	\$ 96,005	\$ 12,565	\$ 40,943	\$ 43,767	\$ 24,001	\$ 11,295	\$ 51,589	\$ 853,373	\$ (81,181)	\$ 772,192	
Orbit Mars	25,125	\$ 102,008	\$ 17,085	\$ 2,261	\$ 7,286	\$ 7,789	\$ 4,271	\$ 2,010	\$ 2,261	\$ 144,971	\$ (14,447)	\$ 130,524	
<b>Total Annual</b>										\$ 998,344	\$ (95,628)	\$ 902,716	
<b>Semi-Annual</b>												\$ 451,358	
	<i>Flash Rate per Mile</i>	\$ 4.06	\$ 0.68	\$ 0.09	\$ 0.29	\$ 0.31	\$ 0.17	\$ 0.08	\$ 0.09	\$ 5.77	\$ (0.58)	\$ 5.19	
	<i>Orbit Rate per Mile</i>	\$ 3.99	\$ 0.68	\$ 0.09	\$ 0.29	\$ 0.31	\$ 0.17	\$ 0.08	\$ 0.09	\$ 5.70	\$ (0.58)	\$ 5.13	
Miles	Annual miles of service provided												
Contract Cost	Annual cost charged by First Transit based on fixed and variable costs												
Contractor Incentive	Maximum performance incentive allocated												
Fuel	Based on contract price of natural gas												
Facilities	City of Tempe overhead expenses associated with facilities operations and maintenance												
Deprec	Depreciation cost of Tempe transit operations facilities and equipment												
Mntmce	Armored car, software, wireless communications, subscriptions, systems maintenance, etc.												
RPTA O.H.	RPTA salaries, fringe and other O.H.												
Credits	FTA provided preventive maintenance (PM) funds												