

INTERGOVERNMENTAL AGREEMENT NO. _____

This Intergovernmental Agreement (the "Agreement") is entered into this _____ day of _____, 2012 pursuant to Arizona Revised Statutes ("A.R.S.") Section 11-952 between the City of Phoenix, through its Public Transit Department (hereinafter referred to as the "Phoenix") and the City of Tempe (hereinafter referred to as "Tempe").

RECITALS

A. Phoenix is empowered to enter into this Agreement pursuant to Chapter 2, Section 2(i) of the Phoenix City Code and is authorized to enter into this Agreement by appropriate action of its City Council.

B. Tempe is empowered to enter into this Agreement pursuant to City Charter Section 1.03 and is authorized to enter into this Agreement by appropriate action of its City Council.

C. Phoenix and Tempe are empowered to enter into this Agreement pursuant to A.R.S. Section 11-952.

D. Tempe desires to obtain and Phoenix desires to provide products that are commonly known as "fare media" for the benefit of Tempe.

AGREEMENT

THEREFORE, IT IS AGREED as follows.

I. **PURPOSE OF AGREEMENT**

The purpose of this agreement is for the assistance with Tempe's efforts to obtain bus and rail fare media and usage of the Platinum Pass Program.

II. **PRODUCT**

Phoenix shall provide the bus and rail fare media in the types and unit prices detailed in Exhibit "A".

III. **TERM OF AGREEMENT**

This Agreement shall be effective for five years, terminating five years from the date of execution.

IV. **PAYMENT OF AMOUNT**

Tempe shall pay Phoenix for the bus and rail fare media based on the current regionally-approved fare prices (see Exhibit A for current pricing). The total of all compensation paid under this Agreement shall not exceed Six Hundred Fifty Thousand Dollars (\$650,000.00) annually unless otherwise determined by mutual agreement. Payments shall be made for bus and rail fare media provided.

Tempe shall pay within 30 days of such request by Phoenix, however that request for payment is to be provided as mutually agreed between the parties in advance of the services. Any payment not timely made by Tempe shall be assessed a late charge at a rate of 1 ½ percent per month.

Tempe, like other retail transit outlets that sell fare media to the public, will receive a 4% discount on all fare media purchased for resale.

V. OWNERSHIP OF INFORMATION

All bus and rail fare media prepared and purchased by Tempe in performance of this Agreement shall be owned by Tempe.

VI. MUTUAL NON-DISCLOSURE

Each party (the "Disclosing Party") may from time to time during the term of this agreement disclose to the other party (the "Receiving Party") certain non-public information regarding the Disclosing Party's business, including technical, marketing, financial, personnel, planning, and other information ("Confidential Information"). The Disclosing Party shall mark all such Confidential Information in tangible form with the legend 'confidential', 'proprietary', or with similar legend. With respect to Confidential Information disclosed orally, the Disclosing Party shall describe such Confidential Information as such at the time of disclosure, and shall confirm such Confidential Information as such in writing within thirty (30) days after the date of oral disclosure. Regardless of whether so marked, however, any non-public information regarding the software used in the Deliverable shall be deemed to be Confidential Information.

Except as expressly permitted by this Agreement, the Receiving Party shall not disclose the Confidential Information of the Disclosing Party using the same degree of care which the Receiving Party ordinarily uses with respect to its own proprietary information, but in no event with less than reasonable care. The Receiving Party shall not use the Confidential Information of the Disclosing Party for any purpose not expressly permitted by this Agreement, and shall limit the disclosure of the Confidential Information of the Disclosing Party to the employees or agents of the Receiving Party who have a need to know such Confidential Information for purposes of this Agreement, and who are, with respect to the Confidential Information of the Disclosing party, bound in writing by confidentiality terms no less restrictive than those contained herein. The Receiving Party shall provide copies of such written agreements to the Disclosing Party upon request; provided, however, that such agreement copies shall themselves be deemed the Confidential Information of the Receiving Party.

Confidential Information shall not be deemed to include any information which: (a) was already lawfully known to the Receiving Party at the time of disclosure by the Disclosing Party as reflected in the written records of the Receiving Party; (b) was or has been disclosed by the Disclosing Party to a third party without obligation of confidence; (c) was or becomes lawfully known to the general public without breach of this Agreement; (d) is independently developed by the Receiving Party without access to, or use of, the Confidential Information; (e) is approved in writing by the Disclosing Party for disclosure by the Receiving Party; (f) is required to be disclosed in order for the Receiving Party to enforce its rights under this Agreement; or (g) is required to be disclosed by law or by the order of a court or similar judicial or administrative body; provided, however, that the Receiving Party shall notify the Disclosing Party of such requirement immediately and in writing, and shall cooperate reasonably with the Disclosing Party, at the Disclosing party's expense, in the obtaining of a protective or similar order with respect thereto.

The Receiving Party shall return to the Disclosing Party, destroy or erase all Confidential Information of the Disclosing Party in tangible form upon the written request of the Disclosing Party (except for software).

VII. TERMINATION

Each party shall have the right to terminate this Agreement by mailing the other party written notice of termination by certified mail, return receipt requested, at least sixty (60) days prior to the effective date of said termination. In the event this Agreement is canceled by Tempe, Tempe shall remain responsible for payment to Tempe for all work performed through the date of termination and for reimbursement to Phoenix for all non-cancellable commitments incurred prior to cancellation.

VIII. INDEMNIFICATION

Each party (as "Indemnitor") shall indemnify, defend, save and hold harmless the other party (as "Indemnitee") and its officers, officials, agents, and employees from and against any and all claims, actions liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property 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.

IX. ASSIGNMENT AND DELEGATION

Neither party may assign any rights hereunder without the express, written, prior consent of both parties.

X. DISPUTES

This Agreement shall be subject to arbitration as may be required by A.R.S. Section 12-1518.

XI. CONFLICT OF INTEREST

The parties acknowledge that this Agreement is subject to cancellation provisions pursuant to A.R.S. Section 38-511, the provisions of which are incorporated herein and made a part hereof.

XII. ENTIRE AGREEMENT

This Agreement, along with its exhibits, contains the entire understanding of the parties hereto. There are no representations or provisions other than those contained herein, any amendment or modification of this Agreement shall be consistent with Article III.

XIII. INVALIDITY OF PART OF THIS AGREEMENT

The parties agree that should any part of this Agreement be held to be invalid or void, the remainder of the Agreement shall remain in full force and effect and shall be binding upon the parties.

XIV. GOVERNING LAW

This Agreement shall be construed under the laws of the State of Arizona and shall incorporate by reference all laws governing the interagency agreements and mandatory contract provisions of state agencies required by statute or executive order.

XV. NOTICES

Any and all notices, requests or demands given or made upon the parties hereto, pursuant to or in connection with this Agreement, unless otherwise noted, shall be delivered in person or sent by United States Mail, postage prepaid, to the parties at their respective addresses as listed below:

If to Tempe:
City of Tempe
Public Works - Transit Division
200 E. 5th Street
Tempe, AZ 85281
(Attention: Greg Jordan, Deputy Director Transportation)

If to Phoenix:
City of Phoenix
Public Transit Department

302 N. 1st Ave., Ste. 900
Phoenix, AZ 85003
Attn: Melissa Sweinhagen

XVI. COMPLIANCE WITH NON-DISCRIMINATION LAWS

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

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

By _____
Neal Young, Interim Public Transit Director

ATTEST:

City Clerk

APPROVED AS TO FORM:

Acting City Attorney

CITY OF TEMPE, a municipal corporation

By: _____

ATTEST:

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

EXHIBIT A

Bus and Rail Fare Media to be provided:

EXHIBIT A

Bus Fare Media to be provided-

Description	Unit Price
Reduce All Day Pass	\$1.75
Reduce 7-Day Pass	\$8.75
Reduce 31-Day Pass	\$27.50
Local All Day Pass	\$3.50
Local 7-Day Pass	\$17.50
Local 31-Day Pass	\$55.00
Express/Rapid 1-Day Pass	\$5.50
Express/Rapid 31-Day Pass	\$85.00
Fall/Spring Reduce Pass	\$97.50
Fall/Spring Semester Pass	\$195.00
Summer Semester Reduce Pass	\$62.50
Summer Semester Pass	\$125.00