

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF TEMPE
AND
THE REGIONAL PUBLIC TRANSPORTATION AUTHORITY
REGARDING
USE OF TEMPE PERSONNEL FOR “SCOUT PROGRAM”**

This Intergovernmental Agreement (“Agreement”) is by and between the City of Tempe (“Tempe”) and the Regional Public Transportation Authority (“RPTA”).

Recitals:

1. Tempe is an Arizona political subdivision and municipal corporation.
2. RPTA is a public agency under A.R.S. § 48-5101, *et seq.*
3. Tempe and RPTA have authority under A.R.S. § 11-952 to enter into intergovernmental agreements.
4. Tempe and RPTA are parties to an Intergovernmental Agreement Regarding the Tempe Bus Operations “Scout Program” concerning a proposal to combine bus operations that Tempe and RPTA currently provide independently within the east valley sub-region.
5. Over the next three years, Tempe and RPTA will examine and test the efficacy of combined bus operations within the east valley sub-region consisting of the bus operations that Tempe and RPTA currently provide independently.
6. During the Scout Program, RPTA will perform bus operations for the City of Tempe as set forth in the RPTA/City of Tempe Fixed Route Bus Operations and Maintenance Service Unification, Contract No. 1210018-S.
7. To accomplish the objectives of the Scout Program and to assist RPTA in performing under the RPTA/City of Tempe Fixed Route Bus Operations and Maintenance Service Unification, Contract No. 1210018-S, Tempe will detail a Senior Transit Operations Coordinator to RPTA for a period of three years.

AGREEMENT

The parties agree as follows:

1. The term of this Agreement is three (3) years which begins on July 1, 2013 (the “Effective Date”) and, unless sooner terminated under any provision of this Agreement, ends on June 30, 2016.

2. Tempe will detail a Senior Transit Operations Coordinator on a full time (40 hour/week) basis to RPTA from July 1, 2013 through June 30, 2016 to assist RPTA in carrying out the terms and conditions set forth in the RPTA/City of Tempe Fixed Route Bus Operations and Maintenance Service Unification, Contract No. 1210018-S.
3. The Senior Transit Operations Coordinator shall adhere to Tempe policies and procedures and RPTA will ensure that the Senior Transit Operations Coordinator adheres to Tempe policies and procedures. In the event of any conflict between RPTA policies and procedures and Tempe policies and procedures, RPTA shall adhere to Tempe policies and procedures.
4. RPTA will direct the actions of the Senior Transit Operations Coordinator but only to the extent set forth in his job description for Tempe.
5. RPTA will provide all essentials necessary to support the activities of the Senior Transit Operations Coordinator assigned to RPTA, including but not limited to, work space, equipment, training and travel.
6. Together, RPTA and Tempe will conduct all necessary performance reviews of the Senior Transit Operations Coordinator in accordance with the applicable Tempe personnel rules and regulations.
7. In its capacity to direct the actions of the Senior Transit Operations Coordinator as set forth in this Agreement and to the extent applicable, RPTA will comply with Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, as amended, all other employment related requirements imposed by federal, state and local law and all implementing regulations thereof.
8. Tempe will establish the salary and benefits, of the Senior Transit Operations Coordinator and make all payments due to him. RPTA will reimburse Tempe on a monthly basis for all payments that Tempe makes pursuant to this Section.
9. RPTA will reimburse Tempe for any and all costs of any injury, incapacity or death of the Senior Transit Operations Coordinator directly or indirectly arising out of, on account of, connected with, or resulting from the duties and responsibilities of RPTA set forth in this Agreement.

10. To the fullest extent permitted by law, RPTA shall defend, indemnify and hold harmless Tempe, its agents, representatives, officers, consultants, employees and volunteers (the “Indemnified Parties”) from any and all losses, liabilities, penalties, damages, claims, suits and actions of any kind, nature, and description, including, but not limited to, attorneys’ fees and costs and claims which result from any act or omission of RPTA, its agents, employees or anyone acting under its direction or control, whether intentional or negligent, directly or indirectly arising out of, on account of, connected with, or resulting from the duties and responsibilities of RPTA set forth in this Agreement. If any action or proceeding be brought against Tempe, RPTA shall defend the same at RPTA’s sole expense and satisfy any judgment rendered in connection therewith and/or pay the costs of settling said litigation or claim. This Agreement is made on the express condition that Tempe shall not be liable for, suffer loss by reason of injury to person or property, from whatever cause in any way connected with the duties and responsibilities of RPTA set forth in this Agreement.

11. RPTA will consider and regard all employee, employment related and private information of, connected with or related to the Senior Operations Coordinator as confidential.

12. Either party may terminate this Agreement by written notification one hundred and eighty (180) days prior to the effective date of the termination. The party is not required to provide just cause for termination in the written notification.

13. Either party may terminate this Agreement immediately for cause. Cause shall include, without limitation: (i) Material violation of this Agreement; or (ii) any act by RPTA exposing Tempe to liability to others for personal injury or property damage.

14. **INSURANCE REQUIREMENTS**

14.1. RPTA, at its expense, shall maintain in force the required insurance coverage and provisions listed below with insurance companies having a Best’s Rating of A-VII or better. RPTA is responsible for paying any deductibles or self-insured retentions and they shall be disclosed on the certificates of insurance. These deductibles or self-insured retentions shall not be applicable with respects to coverage afforded to the City of Tempe under these policies.

14.2. All coverage shall be evidenced on a certificate of insurance provided to the City of Tempe prior to commencement of this contract. The City of Tempe shall be named as an additional insured on the certificate(s) of insurance and/or formal endorsements and shall provide a waiver of subrogation against the City of Tempe.

- 14.3. Each insurance policy shall not be subject to lapse, cancellation or material change in coverage unless at least 30 days prior written notice is provided to the City of Tempe.
- 14.4. Contractor's insurance shall be primary insurance to the City, and any insurance or self-insurance maintained by the City shall not contribute to it.
- 14.5. The agreement shall specify that all contractors and subcontractors of every tier that are to be involved in this agreement shall either be covered by RPTA's insurance policies or RPTA must obtain evidence of insurance from each subcontractor at the same minimum limits and coverages as requested by the City of Tempe of RPTA.
- 14.6. Commercial General Liability – RPTA shall maintain in force the following minimum commercial general liability insurance; \$1,000,000 per occurrence with a \$2,000,000 aggregate for bodily injury, death and property damage, personal and advertising injury, and products/completed operations.
- 14.7. Commercial Automobile Liability – RPTA shall maintain the following minimum business auto liability insurance limits; \$1,000,000 combined single limit per accident. Coverage shall be for "any auto", which includes all owned autos, hired and leased autos, and non-owned autos.
- 14.8. Workers' Compensation and Employers' Liability Insurance – RPTA shall maintain the following minimum workers' compensation coverages and statutory limits to cover obligations imposed by federal and state statutes having jurisdiction of Contractor employees engaged in the performance of services; and, employer's liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee and \$1,000,000 disease policy limit.
- 14.9. Excess Liability Insurance Requirements – RPTA shall maintain the following minimum limits of excess liability limits over the commercial general liability limits, auto liability limits and employers' liability limits; \$10,000,000 per occurrence with a \$10,000,000 aggregate.

15. **MISCELLANEOUS.**

15.1. **Disputes.** Notwithstanding any disagreement between the parties, RPTA shall continue to perform, during the pendency of any dispute, in accordance with the terms and conditions under this Agreement. RPTA shall be responsible for requesting instructions or interpretations when an ambiguity is apparent, and is liable for any cost or expenses arising from its failure to do so.

15.2. **Waiver.** In the event any term or condition contained in this Agreement should be breached by any party and thereafter waived by the other party, such waiver shall be in writing and signed by an authorized representative of the party granting the waiver and shall not be deemed to waive any other breach of this Agreement.

15.3. **Accuracy of Representations and Warranties.** The parties acknowledge that each and every representation, warranty, term and condition in this Agreement shall be true and accurate as of the date of this Agreement, shall constitute a material part of the consideration for this Agreement and shall survive the execution of this Agreement.

15.4. **Notices and Requests.** Any notice, consent or other communication ("Notice") required or permitted under this Agreement shall be in writing and signed by the proper authority and either: (i) delivered to the party at the address set forth below; (ii) deposited in the United States mail, registered or certified, return receipt requested, to the address set forth below; or (iii) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to RPTA:

Regional Public Transportation Authority
101 North 1st Ave., Suite 1300
Phoenix, Arizona 85003
(Attention: Stephen R. Banta, Chief Executive Officer)

If to TEMPE:

City of Tempe
200 East 5th Street
Tempe, Arizona 85281
(Attention: Gregory M. Jordan, Deputy Public Works Director)

With a copy to:

City Attorney
City of Tempe
21 East Sixth Street, Suite 201
P.O. Box 5002
Tempe, Arizona 85280

or at such other address, and to the attention of such other person or officer as any party may designate in writing by Notice duly given pursuant to this section. Notices shall be deemed received: (a) when delivered to the party; (b) five business days after being placed in the United States Mail, properly address, with sufficient postage; or (c) the following business day after being given to a recognized overnight delivery service, with the person giving the Notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a Notice is also given to the party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the Notice may be sent, is deemed to have received the Notice.

15.5. **Publicity Releases.** All publicity releases or releases of reports, papers, articles, maps or other documents in any way connected with this Agreement which RPTA desires to make, shall be subject to Tempe's prior approval. RPTA shall promptly notify Tempe of all enquiries it receives from the media or other jurisdictions regarding the performance of the work under the Agreement.

15.6. **Audit.** Tempe has the right to inspect any and all records that RPTA maintains with respect to this Agreement upon prior written notice to RPTA. RPTA shall allow Tempe reasonable access to the records pertaining thereto. This Section shall survive termination, cancellation or revocation, whether in whole or in part, of this Agreement for a period of five (5) years following the date of such termination, cancellation, or revocation.

15.7. **Attorney's Fees.** In the event either party finds it necessary to bring any action at law or other proceeding against the other party to enforce any of the terms, covenants, or conditions of this Agreement or by reason of any breach or default of this Agreement, the party prevailing, in such action or other proceeding shall be paid all reasonable costs and reasonable attorneys' fees by the other party and in the event any judgment is secured by the prevailing party, all such costs and attorneys' fees shall be included therein, such fees to be set by the Court.

15.8. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signature of all parties may be physically attached to a single document.

15.9. **Headings.** The descriptive heading of the sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

15.10. **Further Acts.** Each of the parties shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters set forth in this Agreement.

15.11. **Assignment.** This Agreement may be assigned by RPTA only upon the prior, written approval of Tempe as evidenced by the City Manager's signature thereon.

15.12. **Legal Compliance.** To the extent applicable, the parties each warrant compliance with any and all applicable federal, state and local statutes, codes, ordinances, rules and regulations of duly constituted authorities having jurisdiction over the services provided via this Agreement, and all applicable employment laws, rules and regulations, along with all laws, rules and regulations attendant thereto. The parties acknowledge that a breach of this warranty is a material breach of this Agreement and parties are subject to penalties for violation(s) of this provision, including termination of this Agreement. Each party shall indemnify, protect, defend and hold harmless the other from and against any and all claims, costs, damages and liabilities (including attorney's fees and costs) arising from any breach by such party of any of the representations and warranties contained herein. The pertinent provisions of this section must be included in any contract either party enters into with all of its contractors or subcontractors who provide services related to this Agreement.

15.12.1. **Scrutinized Business Operations.** Pursuant to A.R.S. § 35-391.06 and § 35-393.06, each party certifies that it does not have scrutinized business operations in Sudan or Iran. The provisions of this section must be included in any contract either party enters into with all of its contractors or subcontractors who provide services related to this Agreement. If it is determined by a Court of competent jurisdiction that a contractor submitted a false certification, contractor's participation related to this Agreement shall terminate without any further action by the parties.

15.12.2. **Compliance with the E-Verify Program.** Pursuant to A.R.S. § 41-4401, both parties warrant to the other that each party will comply with all Federal immigration laws and regulations that relate to their employees and that each now complies with the E-Verify Program under A.R.S. § 23-214(A). A breach of this warranty will be considered a material breach of this Agreement and may subject the breaching party to penalties up to and including termination of this Agreement. Both parties retain the legal right to inspect the papers of any employee who works pursuant to this Agreement or any related contract or subcontract to ensure compliance with the warranty given above. Either Party may conduct a random verification of the employment records of the other to ensure compliance with this warranty. A party will not be considered in material breach of this Agreement if it establishes that it has complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A). The provisions of this section must be included in any contract either party enters into with all of its contractors or subcontractors who provide services related to this Agreement.

15.13. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are hereby superseded and merged into this Agreement.

15.14. **Amendment.** This Agreement may not be amended or a provision of this Agreement may not be waived except by written amendment signed by the parties.

15.15. **Governing Law.** This Agreement is entered into in Arizona and shall be construed and interpreted under the laws of the State of Arizona. Venue for any action commenced in connection with the Agreement shall be proper only in a court of competent jurisdiction located in Maricopa County, Arizona.

15.16. **Termination.** If any action, rule, law or decision of any legislative or administrative body or of any Court should materially impair or materially and adversely affect the enforceability of any material provision of this Agreement, the parties may mutually terminate this Agreement.

15.17. **Severability.** If any provision of this Agreement is found to be invalid or unenforceable, such provision will be deemed severed from this Agreement, which will otherwise remain in full force and effect, provided that the overall intent of the parties is not materially vitiated by such severability.

15.18. **Conflict of Interest.** This Agreement is subject to, and may be terminated by Tempe in accordance with the provisions of A.R.S. § 38-511.

15.19. **Authorized Signatures.** The representatives who have signed the Agreement are authorized to execute this document and bind their respective entities to the terms and conditions of this Agreement.

Each party is signing this Intergovernmental Agreement regarding the Tempe Bus Operations Scout Program on the date stated opposite that party's signature.

REGIONAL PUBLIC TRANSPORTATION
AUTHORITY

Date: _____

By: _____

Stephen R. Banta
Chief Executive Officer

ATTEST:

Joe Ramirez
Contracts and Procurement Manager

CITY OF TEMPE

Date: _____

By: _____

Mark W. Mitchell
Mayor of Tempe

ATTEST:

Brigitta M. Kuiper
Tempe City Clerk

INTERGOVERNMENTAL AGREEMENT DETERMINATION

In accordance with the requirements of A.R.S. Section 11-952(D), each of the undersigned attorneys acknowledge that: (1) they have reviewed the above Agreement on behalf of their respective clients; and, (2) 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.

Judith R. Baumann, Interim City Attorney
City of Tempe

Michael J. Ladino
General Counsel for RPTA