



City of Phoenix
PUBLIC TRANSIT DEPARTMENT

December 18, 2006

Mr. John Riley
Executive Director of Purchasing
Arizona State University
Box 875212
Tempe, AZ 85287-5212

RE: Agreement between City of Phoenix and Arizona Board of Regents

Dear Mr. Riley,

Enclosed is one (1) original copy of the Agreement between the City of Phoenix and the Arizona Board of Regents for the transit pass demonstration/pilot project for Arizona State University. This document is for your records.

Sincerely,

Kimberly Hayden
Contracts Specialist II
(602) 534-9222
kimberly.hayden@phoenix.gov

City of Phoenix
Public Transit Department
302 N. 1st Ave, Suite 900
Phoenix, AZ, 85003

AGREEMENT NO. 120114

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF PHOENIX
AND
THE ARIZONA BOARD OF REGENTS

(Arizona State University
Faculty, Staff & Student Pass Pilot/Demonstration Project)

THIS AGREEMENT is made and entered into this 8th day of Nov.,
2006, by and between the City of Phoenix, a municipal corporation duly organized and
existing under the laws of the state of Arizona (hereinafter referred to as "PHOENIX")
and the Arizona Board of Regents for and on behalf of Arizona State University
(hereinafter called "ASU").

RECITALS

WHEREAS, the City Manager of PHOENIX, is authorized and empowered
by provisions of the City Charter to execute contracts; and,

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. Section 11-951, et seq.;
Chapter 2, Section 2, Subsections (c)(i) and (l), Charter of the City of Phoenix, 1969];
and,

WHEREAS, in response to a shortage of parking and future parking fee
increases at Arizona State University (ASU), the City of Tempe funded a survey to
determine current and potential bus use by ASU students and employees; and,

WHEREAS, the aforementioned survey provided data to allow the Cities
of Tempe and Phoenix, and the Regional Public Transportation Authority to develop
ridership and revenue estimates for the fall 2005, spring 2006, summer 2006, fall 2006
and spring 2007 sessions at ASU; and,

WHEREAS, the purpose of these estimates was to test an unlimited use
transit pass program for ASU and to collect actual usage data for ASU while holding the
transit agencies harmless for any revenue loss; and,

WHEREAS, on or about May 4, 2005, the Phoenix City Council adopted Ordinance No. S-31925 (amending Ordinance No. 30588) establishing fares for the ASU Pilot/ Demonstration Project; and,

WHEREAS, ASU and the cities of Tempe and Phoenix undertook the initial phase of a Pilot/Demonstration Project to provide an unlimited transit use pass to ASU faculty, staff and students; and,

WHEREAS, based on the actual data collected through the end of April, 2006, ridership has exceeded estimates and will likely be 37% higher than projected; and,

WHEREAS, ASU has requested that the project continue at ASU's cost for the period from commencing with its current expiration date, i.e., August, 2006, and continuing through May 31, 2007; and,

WHEREAS, PHOENIX and ASU have been duly authorized to enter into this Agreement; NOW, THEREFORE,

AGREEMENT

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

SECTION 1. Purpose. In response to a shortage of parking and future parking fee increases at ASU, extend the unlimited use transit pass demonstration/ pilot project for ASU through May 31, 2007. At the conclusion of this extension of the project, collect actual usage data to determine current and potential bus use by ASU students and employees.

SECTION 2. Key Provisions. Each of the parties shall participate in the ASU Transit Pass Pilot/Demonstration Project. The key provisions of the project are as follows:

- A. The duration of this project extension shall be through May 31, 2007.
- B. PHOENIX shall create and distribute to ASU transit passes for unlimited use during term of this extension. Passes shall be issued solely and exclusively to ASU faculty, staff and students by ASU in accordance with such terms and conditions as ASU may seek to impose.
- C. Marketing for the transit pass program will be paid by ASU.
- D. Passes shall be valid for the session when issued and participants wishing to continue to participate in the program will be required to obtain a new pass each session.

E. ASU shall pay PHOENIX the sum of \$700,000 for transit passes to be used by ASU students and employees. ASU shall pay for the passes delivered to them within thirty (30) calendar days after receipt of the passes. The following delivery schedule and schedule for payment of associated cost has been agreed to by the parties:

- Upon execution of this Agreement 10,000 passes \$350,000
- January 2, 2007 10,000 passes \$175,000
- February 1, 2007 10,000 passes \$175,000

F. If, based upon demand additional passes are required, PHOENIX shall provide the additional passes at no additional cost to ASU. Provided, however, that the parties recognize that a minimum of six (6) weeks is need to process and procure requests for additional passes.

G. PHOENIX shall either amend its Transit Fare Ordinance (Ordinance No. S-30588) to include a provision for Arizona State University (ASU) Pilot/Demonstration Project or take such other action as may be required to permit the issuance of the passes specified herein.

SECTION 3. Nondiscrimination. The parties agree to comply with all applicable state and federal laws, rules, regulations and executive orders governing equal employment opportunity, immigration, nondiscrimination and affirmative action.

SECTION 4. Fiscal Year; Failure to appropriate. The parties agree that notwithstanding any provision of this Agreement to the contrary, if performance under this Agreement by any party hereto shall ever be dependent upon the appropriation of funds by the City Council or by the state legislature, and if the City Council or the state legislature should fail to appropriate the necessary funds for such performance, then, by written notice to the other party, such party may cancel this Agreement and have no further duty or obligation to the other parties hereunder. The parties hereto recognize and understand that appropriation is a legislative act and is beyond the control of any of the parties hereto.

SECTION 5. Conflict of Interest. The parties acknowledge that this Agreement is subject to the provisions of Section 38-511, Arizona Revised Statutes, and may be canceled in accordance therewith, without penalty to or further obligation of such canceling party, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of any party hereto is, at any time while this Agreement or any extension of this Agreement is in effect, an employee or agent of any other party to this Agreement in any capacity or a consultant to any other party of this Agreement with respect to the subject matter hereof.

SECTION 6. Dispute Resolution. In the event of a dispute under this Agreement, the parties agree that such dispute shall be subject to arbitration to the extent required by § 12-1518 and § 12-133, Arizona Revised Statutes, and rules promulgated thereunder.

SECTION 7. Inspection of Records and Records Retention. To the extent required by § 35-214, Arizona Revised Statutes, the parties hereto shall retain all books, accounts, reports, files and other records relating to this Agreement and make such records available at all reasonable times for inspection and audit by the parties hereto or their agents, during the term of and for a period of five (5) years after the completion of this Agreement. Such records shall be provided at such location as reasonably designated by the requesting party upon reasonable notice to the other party.

SECTION 8. General Provisions.

A. **Assignability; Successors and Assigns; Third Party Beneficiaries.** This Agreement, and any rights or obligations hereunder, shall not be transferred or assigned by either party without the prior written consent of the other. Any attempt to assign without such prior written consent shall be void. Any person or legal entity to a party's interest under this Agreement passes by operation of law, or otherwise, shall be bound by the provisions of this Agreement. It is the specific intention of the parties that this Agreement is made and entered into for their specific benefit and that third party beneficiaries, with the ability to enforce this Agreement, are not being created hereby. This Agreement shall inure only to the benefit of each of the parties and to their permitted successors and assigns.

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 either of them in the performance of their respective obligations under this Agreement are employees of the other. The employing party 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.

Further, it is understood and agreed that neither party is the agent of the other and neither party is authorized to act on behalf of the other party

C. **Entire Agreement; Modification (No Oral Modification).** This Agreement constitutes the full and complete understanding and agreement of the parties. It supersedes and replaces any and all previous representations, understandings, and agreements, written or oral, relating to its subject matter. There shall be no oral alteration or modification of this Agreement; this Agreement and its terms, may not be modified or changed except in writing signed by both parties.

D. **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.

- E. Compliance with Laws, Permits. Both parties shall comply with all applicable laws, ordinances, regulations and codes of federal, state and local governments. Further, each shall be solely responsible for obtaining all approvals, permits and licenses necessary to perform the work called for under this Agreement.
- F. Applicable Law and Litigation. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Arizona. Any and all litigation between the parties arising from this Agreement shall be litigated solely in the appropriate state court located in Maricopa County, Arizona.
- G. 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.
- H. 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, within thirty (30) days of the commencement of the extension to the project covered by this Agreement upon not less than thirty (30) calendar days prior written notice to the other. Should this Agreement be terminated, the terminating party shall complete performance and make all payments due prior to the termination date.

When notice of termination is received, the terminating party shall consult with the other party concerning the status of their respective obligations hereunder and their intention with regard thereto. After such consultation, each party shall consider the requested actions proposed by the other and shall proceed in a manner to minimize the negative impact of such termination.

- I. 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 PHOENIX: Jim Campion
Lead Contracts Specialist
City of Phoenix Public Transit Department
302 North 1st Avenue; Suite 900
Phoenix, AZ 85003
Telephone: (602) 262-7242
FAX: (602) 495-2002
E-mail: jim.campion@phoenix.gov

If intended for ASU:

John Riley
Executive Director of Purchasing
Arizona State University
Box 875212
Tempe, Arizona 85287-5212
Telephone: (480) 965-6532
FAX: (480) 965-5688
E-mail: John.Riley@ASU.edu

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 9. Effective Date: This Agreement shall be in full force and effect upon approval of PHOENIX's City Council and ASU's Board of Regents, when executed by their duly authorized officials, and when filed with the County Recorder pursuant to A.R.S. § 11-952(G).

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



CITY OF PHOENIX, ARIZONA
Frank Fairbanks, City Manager

By Debbie Cotton
Debbie Cotton
Public Transit Director

ATTEST:

Blair Pariza
City Clerk - PHOENIX

APPROVED AS TO FORM:

William Boes
Acting City Attorney - PHOENIX

APPROVED BY PHOENIX CITY COUNCIL BY ORDINANCE NO. S-31925 on May 4, 2005.

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

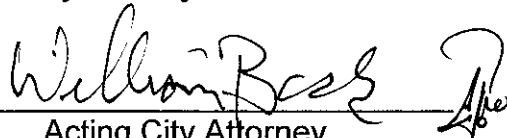
By 
John Riley
Executive Director Purchasing

APPROVED BY THE ARIZONA BOARD OF REGENTS on NA, 2006.


INTERGOVERNMENTAL AGREEMENT DETERMINATION

In accordance with the requirements of Section 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 City of Phoenix


Acting City Attorney
200 W. Washington; Suite 1300
Phoenix, Arizona 85003

Attorney for Arizona Board of Regents


Associate General Counsel
Arizona State University
Tempe, Arizona 85287-2003