

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE REGIONAL PUBLIC TRANSPORTATION AUTHORITY (AGENCY)
AND
CITY OF MESA
145-17-2024-00
(Platinum Program Agreement)

THIS INTERGOVERNMENTAL AGREEMENT (“**Agreement**”) is made and entered into this 1st day of June 2024 (“**Effective Date**”), by and between: the Regional Public Transportation Authority, a political subdivision of the state existing under the laws of the State of Arizona (hereinafter referred to as “**AGENCY**”), and the City of Mesa, an Arizona municipal corporation (hereinafter referred to as “**CITY**”). AGENCY and CITY are sometimes referred to collectively as “**Parties**” and individually as a “**Party.**”

RECITALS

- A.** The AGENCY Chief Executive Officer is authorized and empowered to execute contracts.
- B.** AGENCY is a political subdivision of the state of Arizona established for the purpose of planning and providing public transportation services (A.R.S. §§ 48-5121; 48-5101, et seq.).
- C.** As a part of its transit system operations, AGENCY has a fare structure that includes: a transit card or mobile fare program for the issuance of fare media (i.e., transit cards) for use on more than one trip; and an employer participation program (“**Platinum Program**”) that allows employers to provide transit cards to their employees on such terms as the employer deems appropriate.
- D.** AGENCY provides its Platinum Program to employers who may, but are not required to, subsidize all or part of their employees’ monthly program charges.
- E.** The Platinum Program offers electronic fare collection and billing services to participating employers where employers are only invoiced for the actual number of boardings reported for each monthly billing period.
- F.** The maximum monthly payment for each cardholder will not exceed the **31-day** fare set by AGENCY for express and local service.
- G.** A.R.S. § 11-951, et seq., provide that public agencies may enter into intergovernmental agreements for the provision of services or for joint or cooperative action.
- H.** CITY is also authorized and empowered pursuant to enter into intergovernmental agreements to exercise any of its powers or perform any of its functions pursuant to Article I, Section 103 of its City Charter.
- I.** CITY has chosen to participate in AGENCY’s Platinum Program in accordance with the terms and conditions set forth herein.
- J.** CITY has the legal authority to participate in the Platinum Program.

AGREEMENT

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

SECTION 1. Purpose

AGENCY administers the Platinum Program that uses electronic fare payment methods such as smartcards. The Platinum Program is generally described in the attached “**Exhibit A**”, which is incorporated by reference into this Agreement. CITY desires to participate in the Platinum Program, and toward that end, the Parties mutually agree to the terms set forth in this Agreement.

SECTION 2. Term of Agreement

The term of this Agreement shall commence on the Effective Date, as indicated above. It shall remain in effect unless terminated or canceled as otherwise provided in this Agreement.

SECTION 3. Issuance of Platinum Cards

AGENCY shall provide Platinum cards to CITY, and CITY shall pay the issuance charge existing at that time for each Platinum card (the current charge per issuance is \$2.00). Requests for additional Platinum cards shall be in the manner and form prescribed by AGENCY. Defective cards shall be replaced by AGENCY at no cost to CITY when such defect is the result of product failure and not the result of misuse or abuse.

- A. The initial order of Platinum Program cards will be waived at the current issuance charge of \$2.00 per card. All subsequent orders will be billed with the issuance charge existing at the time for each card.
- B. AGENCY shall make available cards to CITY for use during the term of this Agreement. Cards shall be issued solely and exclusively to CITY staff, and in accordance with such terms and conditions as CITY may seek to impose. The cards are non-transferable and only authorized for use by the individuals to whom they are provided by CITY. AGENCY will deliver the cards to:

City of Mesa
55 N Center Street
Mesa, AZ 85201
Phone: (480) 644-3981

SECTION 4. Management of Platinum Program

- A. Upon receipt of the signed agreement, CITY shall be provided with access to Valley Metro’s fares portal. Using the portal, the CITY will be able to place card orders, create members and assign them to fare media, deactivate and activate fare media, and replace media that are lost/stolen.
- B. CITY will deactivate an employee’s card using the Valley Metro fares portal upon their termination of employment or withdrawal from the Platinum Program.
- C. If CITY requires deactivation for any reason of a Platinum Program card and the portal is available, then CITY will deactivate the card. CITY shall be responsible for all costs incurred on a card until the deactivation has been completed in the fares portal by CITY.
- D. Should the portal be unavailable for more than 24 hours, CITY shall send deactivation requests to AGENCY at platinumprogram@valleymetro.org. At a minimum, the deactivation request shall include:
 - 1. CITY account name;

2. card number;
 3. deactivation date;
 4. reason for deactivation
 5. name and position of the authorized individual sending the notice.
- E.** CITY shall be responsible for all costs incurred on the card for up to 48 hours (not including hours on weekends and city-recognized holidays) after CITY notifies the AGENCY of its card deactivation. For any notice transmitted to AGENCY on the last day of the work week after 5:00 P.M., over a weekend, or during a AGENCY-recognized holiday, the 48-hour period shall commence on the first workday following the weekend or holiday. AGENCY will waive any charges for usage of the card after this 48-hour period.
- F.** CITY has sole responsibility for its marketing of the Platinum Program, at its own cost and expense. Within the scope of such marketing, CITY shall include an education/training component, introducing users to the Platinum Program and the use of smartcards. Materials to support marketing the Platinum Program are available from the Regional Public Transportation Authority (AGENCY).
- G.** Program participation costs and the current cost of cards are set forth in the attached **Exhibit A** and **Exhibit B** which are incorporated by reference into this Agreement. The Parties acknowledge that the fare structure for the bus, rail, and streetcar system is set by AGENCY and this fare structure may change the costs of cash fare and monthly rates during the term of this Agreement. CITY shall pay the current costs as they exist at the time of each card use.

SECTION 5. Billing for Services Provided

- A.** AGENCY shall invoice CITY monthly, summarizing line item entry totals of cash fare and monthly rates for each cardholder by Platinum Program card serial number. Charges to CITY for the services rendered shall be billed on or about the 10th day of each month for the previous month.
- B.** If CITY deactivates a card, AGENCY will provide upon request detailed usage information for those cards, at no charge to the CITY. AGENCY will use its best reasonable efforts to expedite the final usage information for that card to facilitate CITY's compliance with statutory obligations to timely pay compensation owed to the terminated employee/cardholder. If CITY receives the final usage information more than four (4) business days after AGENCY receives the request, then AGENCY will waive in that month's invoice any card charges owed to CITY that CITY is unable to collect from the cardholder, as evidenced in a separate notice to AGENCY.
- C.** CITY shall pay AGENCY within 30 calendar days of invoice date. CITY will pay any interest charged for late payment in accordance with state law. AGENCY will bill CITY monthly in arrears for participating in the Platinum Program. Invoices will be mailed to:

City of Mesa
 Attn: Business Services Admin, MS3399
 PO Box 1466
 Mesa, AZ 85211-1466
 Email: BusinessServicesAdmin@mesaaz.gov
 Phone: (480) 644-3981

- D.** If requested by CITY, for an extra fee of \$25 per month per format, detailed usage information by Platinum Program card number shall be provided. Available formats are a PDF or in a mutually agreeable electronic format suitable for upload to CITY's payroll system.

SECTION 6. General Terms and Conditions

The following General Terms and Conditions shall apply to this Agreement:

- A.** Term of Agreement This Agreement shall be in full force and effect upon: approval of AGENCY's Board of Directors and CITY's Council; and execution by their duly authorized officials. This

Agreement shall remain in effect unless terminated or canceled as otherwise provided in the Agreement.

- B. Entire Agreement; Modification (No Oral Modification)** This Agreement and its attached exhibits constitute the full and complete understanding and agreement of the Parties. The Agreement 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 by a formal amendment signed and approved by and between the duly authorized representatives of both Parties. Both Parties expressly and explicitly understand and agree that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment, modification, or supplementation to this Agreement.
- C. Non-Availability of Funds** In accordance with A.R.S. § 41-2546(C), every payment obligation is conditional upon the availability of funds appropriated for the payment of such obligation. If either Party fails to receive an appropriation that may lawfully be allocated to the performance of their obligations under this Agreement, then the Agreement may be terminated at the end of the period for which such funds are available. No liability shall accrue to either Party in the event this provision is exercised, and neither Party shall be obligated or liable for any charges as a result of termination under this paragraph.
- D. Termination for Conflict of Interest** In accordance with A.R.S. § 38-511, either Party may terminate this Agreement for conflict of interest upon **90 calendar days** prior written notice to the other Party.
- E. Termination**
- (1) Except for termination in the event of non-payment, either Party may, at its option with sole and unfettered discretion, terminate its obligations under this Agreement, with or without cause, on no less than **60 calendar days** prior written notice. Should this Agreement be terminated, the Parties shall complete performance and make all payments due as of the termination date.
 - (2) When termination is for non-payment of sums due under this Agreement, the Party to receive payment may, at its option with sole and unfettered discretion, terminate its obligations under this Agreement. Prior to such termination, the Party to receive payment shall provide written notice to the other Party setting forth the amount due and requiring payment within **10 business days** of receipt of the notice. In the event payment is not received within that **10-business-day** period, the Party to receive payment may terminate this Agreement upon **10 calendar days** prior written notice.
 - (3) When notice of termination is received, the terminating Party shall consult with the other Party concerning the status of their respective obligations under this Agreement and its intention with regard to those obligations. 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.
 - (4) Notwithstanding the termination of this Agreement by either Party, the respective payment and indemnification obligations of the Parties shall continue in full force and effect until completed.
- F. Inspection of Records and Records Retention** To the extent required by A.R.S. § 35-214, 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 or their agents during the term of this Agreement.
- G. Assignment and Delegation; No Third-Party Beneficiaries** Neither Party may assign or transfer any rights or obligations hereunder without prior written consent of the other Party. Any attempt to

assign or transfer without the prior written consent of the other Party shall be void. 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 by the Agreement. This Agreement shall inure only to the benefit of each of the Parties and their permitted successors and assigns.

- H. Compliance with the Immigration Reform and Control Act of 1986 (“IRCA”) and with A.R.S. § 23-211 – § 23-214 In performing under this Agreement, the Parties understand and acknowledge the applicability of IRCA and A.R.S. § 23-211 through § 23-214 to them, and each of the Parties shall comply with IRCA, A.R.S. § 23-211 through § 23-214, and all other federal and state laws and regulations relating to immigration and to the immigration status of its employees.
- I. Non-Discrimination 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.
- J. Notice Any notice, consent, or other communication (“**Notice**”) required or permitted under this Agreement shall be in writing and either delivered in person, via email, deposited in the United States mail (postage prepaid, registered or certified mail, and return receipt requested), or deposited with any commercial air courier or express service addressed as follows:

If intended for AGENCY: Regional Public Transportation Authority
Attn: Procurement
101 North 1st Avenue; Suite 1400
Phoenix, Arizona 85003
Email: procurement@valleymetro.org

If intended for CITY: City of Mesa
Attn: Business Services Director, MS3399
PO Box 1466
Mesa, Arizona 85211-1466
Email: businessservicesadmin@mesaaz.gov

Notice shall be deemed received:

- (1) at the time it is personally served;
- (2) on the day it is sent via email;
- (3) on the **2nd business day** after its deposit with any commercial air courier or express service;
or
- (4) on the **10th calendar day** after its deposit in the United States mail (postage prepaid, registered or certified mail, and return receipt requested).

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, email address, or the person to receive the Notice by providing the other Party with a Notice of that change.

Notice sent via email 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 original Notice sent via email.

- K. 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 of the Agreement. This Agreement shall thereafter be construed as though the invalid or unenforceable term or provision were not contained in the Agreement.

- L. 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 any requirements, terms, or provisions of this Agreement.

SECTION 7. Exhibits and Incorporation by Reference

The following exhibits are attached and incorporated by reference into this Agreement:

Exhibit A – General Description of the Platinum Program

Exhibit B –Monthly Rates

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first set forth above:

REGIONAL PUBLIC TRANSPORTATION AUTHORITY (AGENCY)

By: _____

Jessica Mefford Miller, Chief Executive Officer

APPROVED BY AGENCY BOARD OF DIRECTORS BY FORMAL ACTION ON:

_____, 2024

THE CITY OF MESA

By: _____

Christopher J. Brady, City Manager

APPROVED BY THE MESA CITY COUNCIL BY FORMAL ACTION ON:

_____, 2024

(Resolution Attached)

INTERGOVERNMENTAL AGREEMENT DETERMINATION

In accordance with the requirements of A.R.S. § 11-952(D), 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 AGENCY

Attorney for CITY

EXHIBIT A

Platinum Program¹

1. **The Platinum Program** Once an employer is approved for participation, it must purchase a minimum of **10** Platinum Program cards. These will include the employer's company name and Platinum Program card serial number. The Platinum Program card does not have an expiration date.

Every time a participating employee boards the bus, light rail or streetcar, the employee taps the card on the purple fare reader. The fare is recorded and the card is automatically charged.

2. **How It Works** The Platinum Program is designed to pay off for employees and employers alike. Here are a few examples:

- **Pay-Per-Ride Charges**: Employer is only charged for the actual number of boardings.
- **Cost of Cards**: The cost of each card shall be at its then prevailing cost (currently **\$2.00/card**).
- **Full Fare Pay-Per-Ride Charges**: Charges are capped at **\$64/month** per card for local routes, light rail, and streetcar boardings, and **\$104/month** per card for Express/RAPID routes.
- **Reduced Fare Pay-per Ride Charges**: Charges are capped at **\$32/month** per card for local routes, light rail, and streetcar boardings only, and **\$104/month** per card for Express/RAPID routes. Reduced fares are only to be used by youth ages 6-18; seniors age 65 and older; persons with disabilities; and Medicare cardholders. Reduced fare users should be ready to provide proof of eligibility when boarding.
- **Effective Dates**: Cards do not expire and can be deactivated if lost or stolen, damaged, rescinded for cardholder termination/resignation, if the agreement is not renewed, or the agreement is terminated.
- **Extra Cards**: Cards can be ordered using the fares portal.
- **One-Stop Accounting**: Employer receives one monthly invoice for total charges on all cards being used.
- **Billing Summary**: A detailed billing summary is available that shows the day, time, and service used for each boarding at a cost of **\$25 per month**.

¹ The terms set forth in this Exhibit are the general program terms. If the body of this Agreement varies from the terms of this Exhibit, then the terms contained in the body of the Agreement shall prevail.

EXHIBIT B

Monthly Rates

The monthly rates set forth in this Exhibit are subject to change. It is mutually understood that AGENCY sets the rates, and makes all changes to them. AGENCY has the right to change the rates from time to time, but AGENCY shall give CITY notice of any fare adjustment, and CITY retains the right to cancel this Agreement prior to the effective date rate adjustment. In the event CITY elects to cancel this Agreement at the time of rate adjustment, the **60 days**' notice required by this Agreement's **Section 6(E)(1)** shall not apply.

A. CITY shall pay no more than the cost of a monthly Smart Fare for each cardholder. The cost of monthly Smart Fares are currently as follows:

- | | | |
|---------------------|------------------------|--|
| (1) Local - | \$64 per month | Local routes, light rail boardings, and streetcar boardings |
| (2) Express/RAPID - | \$104 per month | Express/RAPID routes or a combination of local routes, light rail service, streetcar, and Express/RAPID routes |
| (3) Reduced Fare - | \$32 per month | Local, light rail, and streetcar service only. If used on Express/RAPID service, the rates in Exhibit B, Section A(2) shall apply |

B. If the total amount of transactions for each cardholder is less than the cost of a monthly Smart Fare, CITY shall be billed for only those transactions. The costs of each transaction are currently as follows:

- | | |
|-------------------------------------|---|
| (1) Local/light rail - | \$2.00 per ride |
| (2) Streetcar - | \$1.00 per ride (when Streetcar fare goes into effect) |
| (3) Express/RAPID - | \$3.25 per ride (Reduced fare does not apply) |
| (4) Local/light rail Reduced fare - | \$1.00 per ride |
| (5) Streetcar Reduced fare - | \$0.50 per ride (when Streetcar fare goes into effect) |