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**CITY OF TEMPE**  
**REQUEST FOR COUNCIL ACTION**

**Council Meeting Date: 01/12/2017**  
**Agenda Item: 5C11**

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**ACTION:** Adopt a resolution authorizing the Mayor to execute an intergovernmental agreement between the City of Tempe and Arizona State University for the installation, operation, and maintenance of a bike share system. (Resolution No. R2017.11)

**FISCAL IMPACT:** Sufficient funds have been appropriated in the Transit Fund, cost center 3917 (Bus Stop & Bikeway Maintenance) for the anticipated expenditures under this Agreement. Arizona State University will pay \$50,000 annually for the program and \$50,000 will be paid annually by the City of Tempe; totaling \$100,000 annually.

**RECOMMENDATION:** Adopt Resolution No. R2017.11.

**BACKGROUND INFORMATION:** Although Arizona State University (ASU) had reviewed the IGA that the Tempe City Council approved on October 27, 2016, ASU requested on November 21, 2016 that the following be added to Section 4.2 of the IGA: "Prior to accepting any system wide title sponsor or entering into any other agreement regarding placing any advertisements, branding, or logos on the Space or on the bicycles, CITY will obtain the written approval of ASU."

Staff does not have any concerns with this additional language.

The City of Tempe will provide bike share services to the ASU Tempe campus and Tempe community to achieve the following objectives.

- Provide mobility to ASU staff, faculty, students, and visitors and Tempe visitors, residents, and employees in and around the ASU campus and Tempe community.
- Reduce the use of private automobiles for as many trips as possible, thus minimizing congestion and air pollution.
- Provide connections to local bus, express, Orbit, and light rail transit services.
- Operate and maintain 300 bicycles year-round with rentals available 24 hours a day, seven days a week.

Specific additional bike share services for ASU will include:

- Maintaining components for bicycles, bicycle racks and signage on ASU property.
- Providing monthly performance reports.
- Collecting and redistributing bicycles to ensure even distribution tailored to ridership trends and popular locations.

The City (through a third party vendor) will provide four bike share stations on ASU's campus, and each bicycle will be equipped with GPS, locks, and front and rear flashing lights.

**ATTACHMENTS:** Resolution and Intergovernmental Agreement

**STAFF CONTACT(S):** Sue Taaffe, Public Works Supervisor, (480) 350-8663

Department Director: Don Bessler, Public Works Director  
Legal review by: Teresa Voss, Assistant City Attorney  
Prepared by: Sue Taaffe, Public Works Supervisor

**RESOLUTION NO. R2017.11**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA AUTHORIZING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF TEMPE AND ARIZONA STATE UNIVERSITY FOR THE INSTALLATION, OPERATION, AND MAINTENANCE OF A BIKE SHARE SYSTEM.**

WHEREAS, Arizona State University (ASU) is authorized to enter into contracts under A.R.S. Section 15-1625;

WHEREAS, the City of Tempe is authorized to enter into this contract under A.R.S. Section 40-1152;

WHEREAS, the City of Tempe is authorized to contract for the provision of public transportation services pursuant to the City of Tempe Code;

WHEREAS, the City of Tempe and ASU desire to provide a local bike share system that facilitates alternative means of transportation across the City of Tempe and in and around the ASU Tempe Campus; and

WHEREAS, the City of Tempe, 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, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA as follows:

That the Mayor is authorized to sign the Intergovernmental Agreement between the City of Tempe and Arizona State University for the installation, operation, and maintenance of a bike share system.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Mark W. Mitchell, Mayor

ATTEST:

\_\_\_\_\_  
Brigitta M Kuiper, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Judith R. Baumann, City Attorney

**INTERGOVERNMENTAL AGREEMENT  
CITY OF TEMPE AND ARIZONA STATE UNIVERSITY  
BIKE SHARE SERVICE  
(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;

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

**WHEREAS:** The CITY and ASU desire to provide a local bike share 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:**

**Bike Share:** Bike Share is an automated on-demand bicycle sharing system that incorporates information technology to operate a fleet of shared bicycles that may be rented from one bike sharing station, providing a transportation alternative to motor vehicle trips for students, residents, employees, and visitors.

**Bike Share Stations:** Any location or structure and any ancillary facilities the purpose of which is to enable customers to rent a bicycle.

**SECTION 1: TERM AND RENEWAL**

This Agreement shall commence as of January 12, 2017 (the "Effective Date"), and shall terminate on June 30, 2018. Funding for this agreement shall be \$50,000 paid by ASU,

pursuant to Section 3, and shall be due thirty (30) days following the completion of the installation of the Bike Share Stations on ASU campus (the "Funding Date").

This Agreement may be terminated, with or without cause, by either party upon sixty (60) days prior written notice to the other party. Upon termination of this Agreement, CITY will cause, at its expense, the Bike Share Stations and any other equipment or fixtures relating to the bike sharing service to be removed from ASU's property.

## SECTION 2: CITY RESPONSIBILITY

- 2.1 Coordinate the negotiation of agreements for the provision of bike share service specifically designated hereunder.
- 2.2 Bike share services will be delivered by an independent contractor(s) pursuant to CITY contract (the "Contractor"). The Contractor shall be duly qualified, licensed, trained, and have adequate equipment to perform services under this Agreement.
- 2.3 Consult with ASU on installation, operations and maintenance of bike share services on the ASU Tempe campus. CITY will install four Bike Share Stations on ASU's Tempe campus (subject to removal per Section 2.7). CITY will give ASU (10) ten days notice prior to installing any of the bike share services. The Contractor is responsible for the day to day operations of the bike share system and will be on ASU's property as needed in order to repair bicycles, racks and signs.
- 2.4 CITY will make available reports on ridership, applicable performance standards, and reasonable financial and operational data to ASU with respect to bike share services provided hereunder.
- 2.5 The CITY shall comply with all applicable laws, ordinances, regulations and codes of the federal, state and local governments.
- 2.6 To the extent required by Section 35-214 of the Arizona Revised Statutes, CITY agrees to retain records relating to this Agreement. CITY agrees to make those records available at 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.
- 2.7 CITY reserves the right to remove a station on ASU's Tempe campus, at CITY's cost, if it is deemed by CITY to be underperforming.

- 2.8 CITY shall require that the Contractor acquire the necessary licenses to place, operate and maintain CITY property on ASU land.
- 2.9 CITY will retain ownership of the all bicycles and the Bike Share Stations. CITY will require the Contractor to secure appropriate insurance coverage over such property to insure against damage, theft, or other loss caused by third-parties and/or natural disaster. ASU will not be liable for any damage or loss of the bicycles and/or the Bike Share Stations, unless such liability or damage is directly caused by ASU.
- 2.10 In using the locations mutually agreed upon by the parties on ASU's Tempe Campus (the "Space"), the CITY will comply with, and cause Contractor to comply with, all applicable state, federal or city laws and regulations, and with the policies and regulations of the ASU pertaining to the use and occupancy of the Space.

### SECTION 3: ASU RESPONSIBILITY

- 3.1 It is ASU's responsibility to review or modify as appropriate any recommendation concerning bike share stations, pedestrian control, and traffic control within ASU right-of-way.
- 3.2 ASU shall pay the total net cost of \$50,000 annually, as provided for in Section 3.3 , to the CITY for its share of the operation of bike share services described hereunder (the "Annual Payment").
- 3.3 ASU is responsible for making the Annual Payment to the CITY each year on or before the anniversary of the Funding Date through the term of this Agreement. The final payment by ASU will be prorated based on the remaining days left in the term of this Agreement.
- 3.4 ASU may request that CITY remove or relocate an existing Bike Share Station(s) on its campus and CITY agrees to remove or relocate such station(s) so long as ASU agrees to pay for the costs to relocate or remove such station(s).
- 3.5 Subject to the terms of this Agreement, ASU grants to CITY a non-exclusive license to install the Bike Share Stations on the Space. The Space is provided to CITY in an "AS IS", "WHERE IS", condition and location, without any representations or warranties by ASU. Nothing in this Agreement will be construed as a grant of any real property right or interest. CITY may only use the Space for purposes of providing the bike share services.

SECTION 4: Miscellaneous

4.1 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.

4.2 Advertising

The regional bike share system is named GRID and shall be branded in accordance with materials provided to ASU by the CITY; provided that the CITY and ASU agree to changes or modifications to the name, brand or sponsorship. Unless a system wide title sponsor is obtained, no advertising shall be permitted on the kiosks, docking racks or bicycles on CITY owned bike share kiosks, docking racks, or bicycles located on ASU's Tempe campus. A title sponsor's branding or logo may be depicted on the bike and sponsors may be recognized at the stations. Prior to accepting any system wide title sponsor or entering into any other agreement regarding placing any advertisements, branding, or logos on the Space or on the bicycles, CITY will obtain the written approval of ASU.

4.3. 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.

4.4 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.

4.5 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 5: INDEMNIFICATION**

Each party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, 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.

**SECTION 6: AMENDMENT**

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

**SECTION 7: 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 8: 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 9: 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 10: 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 11: 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 12: 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 13: 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 14: 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 15: 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 16: 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  
Sue Taaffe, Public Works Supervisor  
Transportation Division  
200 East Fifth Street  
Tempe, AZ 85281

If to ASU:

Arizona State University  
JC Porter, Assistant Director  
Parking and Transit Services  
P.O. Box 875205  
Tempe, Arizona 85287-5205

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.

SECTION 17: ARBITRATION IN SUPERIOR COURT

As required by ARS § 12-1518, the parties agree to make use of arbitration in disputes that are subject to mandatory arbitration pursuant to ARS § 12-133.

SECTION 18: FAILURE OF LEGISLATURE TO APPROPRIATE.

In accordance with ARS § 35-154, if ASU's performance under this Agreement depends on the appropriation of funds by the Arizona Legislature, and if the Legislature fails to appropriate the funds necessary for performance, then ASU may provide written notice of this to Entity and cancel

this Agreement without further obligation of ASU. Appropriation is a legislative act and is beyond the control of ASU.

**SECTION 19: GOVERNING LAW**

This Agreement will be governed by the laws of the State of Arizona without regard to any conflicts of laws principles. ASU's obligations hereunder are subject to the regulations/policies of the Arizona Board of Regents. Any proceeding arising out of or relating to this Agreement will be conducted in Maricopa County, Arizona.

**SECTION 20: WEAPONS, EXPLOSIVES, AND FIREWORKS.**

ASU prohibits the use, possession, display or storage of any weapon, explosive device or fireworks on all land and buildings owned, leased, or under the control of ASU or its affiliated or related entities, in all ASU residential facilities (whether managed by ASU or another entity), in all ASU vehicles, and at all ASU or ASU affiliate sponsored events and activities, except as provided in A.R.S. § 12-781 or unless written permission is given by the Chief of the ASU Police Department or a designated representative. Notification by CITY to all persons or entities who are employees, officers, subcontractors, consultants, agents, guests, invitees or licensees of CITY, including Contractor ("CITY Notification Parties") of this policy is a condition and requirement of this Agreement. CITY further agrees to enforce this contractual requirement against all CITY Notification Parties. ASU's policy may be accessed through the following web page: <http://www.asu.edu/aad/manuals/pdp/pdp201-05.html>

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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Nichol Luoma  
Associate Vice President  
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

