

# Staff Summary Report

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**Council Meeting Date:** 11/20/08

**Agenda Item Number:** \_\_\_\_\_

**SUBJECT:** Resolution approving and authorizing the City Manager to sign an Intergovernmental Agreement between the City of Tempe and the City of Mesa for administration of “Water – Use it Wisely” advertising materials and campaign.

**DOCUMENT NAME:** 20081120fst07      **WATER MANAGEMENT ADMINISTRATION (0811-13)**  
Resolution No. 2008.92

**SUPPORTING DOCS:** Yes

**COMMENTS:** (2008.92) Total expenditures of funds shall not exceed \$15,000 per fiscal year.

**PREPARED BY:** Ted Stallings, CPPB, Procurement Officer, 480-350-8617

**REVIEWED BY:** Michael Greene, CPM, Central Services Administrator, 480-350-8516  
Don Hawkes, Water Utilities Manager, 480-350-2660

**LEGAL REVIEW BY:** Dave Park, Assistant City Attorney, 480-350-8907

**FISCAL NOTE:** Sufficient funds have been appropriated in cost center 3052 for the anticipated expenditures in the current fiscal year.

**RECOMMENDATION:** Adopt Resolution No. 2008.92 approving and authorizing the City Manager to sign the Intergovernmental Agreement.

**ADDITIONAL INFO:** None

**RESOLUTION NO. 2008.92**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, APPROVING AND AUTHORIZING THE CITY MANAGER TO SIGN AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF TEMPE AND THE CITY OF MESA FOR ADMINISTRATION OF WATER—USE IT WISELY ADVERTISING MATERIALS AND CAMPAIGN.**

WHEREAS, the City of Mesa is a party to agreements for advertising services with Park & Company, an Arizona corporation, which led to the development of the “Water—Use It Wisely” advertising campaign;

WHEREAS, the City of Tempe and the City of Mesa wish to partner in a water conservation messaging media campaign using the “Water—Use it Wisely” advertising materials; and

WHEREAS, the City of Tempe and the City of Mesa receive a substantial benefit from the cooperative administration related to the advertising campaign, including reduced costs derived from consolidating billing, increased leverage with electronic and print media providers, improved efficiency, and increased dissemination and effectiveness of the advertising campaign;

WHEREAS, it is in the City of Tempe’s best interest to enter into this intergovernmental agreement whereby the City of Tempe will provide the City of Mesa funds for the advertising campaign and the City of Mesa will act as lead agent in allocating and administering the payment of such funds which will benefit both Cities.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

That the Intergovernmental Agreement between the City of Tempe and the City of Mesa is approved and the City Manager is authorized to sign the Agreement for the City of Tempe.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Mayor

ATTEST:

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City Clerk

APPROVED AS TO FORM:

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City Attorney

INTERGOVERNMENTAL AGREEMENT NO. \_\_\_\_\_  
BETWEEN  
THE CITY OF TEMPE  
AND  
THE CITY OF MESA  
FOR ADMINISTRATION OF  
WATER – USE IT WISELY™ ADVERTISING MATERIALS AND CAMPAIGN

1. **PARTIES**

THIS AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2008, pursuant to Arizona Revised Statutes (A.R.S.) §11-952, between the City of Tempe (“Tempe”), and the City of Mesa (“Mesa”). These entities are also collectively referred to in this Agreement as the “Parties.”

2. **DEFINITIONS**

“Account Services” means costs incurred for the purpose of managing Campaign accounts and Campaign administration.

“Advertising Materials” means “**Water – Use It Wisely™**” related print, broadcast, website, collateral and other marketing pieces developed for the purpose of advertising the Campaign.

“Authorized Representative” shall mean the representatives of Tempe and Mesa appointed pursuant to Section 12 to administer certain provisions of this Agreement.

“Campaign” means the water conservation media activities supported by the Arizona **Water – Use It Wisely™** public and private sector partners within the greater Phoenix metropolitan area, including the Cities of Tempe and Mesa (“Regional Campaign Area”).

“Direct Advertising Costs” means Campaign costs directly allocable to print and broadcast media. Direct Advertising Costs do not include costs incurred for the actual development of Advertising Materials such as television or radio spots.

3. **RECITALS**

WHEREAS, Mesa is authorized by City Charter, Article 1, Section 103, to enter into this Agreement; and

WHEREAS, Tempe is authorized by City Charter, Article 1, Sec. 1.03. to enter into this Agreement; and

WHEREAS, Mesa is party to agreements for advertising services with Park & Company ("Park"), an Arizona corporation, which led to the development of the **Water – Use It Wisely™** Advertising Materials and Campaign; and

WHEREAS, pursuant to the agreements with Park, Mesa has the perpetual right to use, publicly display, reproduce in the same or other mediums, and modify the Advertising Materials, both within and outside the State of Arizona, as well as the right to authorize other persons, governments, corporations, or other entities located in Arizona the right to use, publicly display, reproduce in the same or other mediums, and modify the Advertising Materials, provided that such third party use of the Advertising Materials is limited to areas within Arizona, subject to limitations by virtue of the rights of third parties where applicable; and

WHEREAS, Tempe and Mesa are partners and have participated in the water conservation messaging media Campaign using the **Water – Use It Wisely™** Advertising Materials which focuses on the Regional Campaign Area; and

WHEREAS, Tempe and Mesa, in addition to the other partners, receive substantial benefit from cooperative administration related to the Campaign, including reduced costs derived from consolidating billing, increased leverage with electronic and print media providers, improved efficiency, and increased dissemination and effectiveness of the Campaign; and

WHEREAS, Tempe and Mesa desire to enter into this Intergovernmental Agreement whereby Tempe will provide Mesa with funds for the Campaign, and Mesa will act as lead agent in allocating and administering the payment of such funds, which will benefit Tempe, Mesa and the Campaign;

**NOW, THEREFORE**, the Parties, for the consideration and under the conditions hereinafter set forth, agree as follows;

4. **RESPONSIBILITIES OF TEMPE**

- 4.1 Tempe agrees to provide to Mesa a contribution in an amount to be determined each fiscal year, not to exceed \$15,000 ("Tempe Contribution"), during the term of this Agreement to be used in accordance with Section 5.2.
- 4.2 Payment for the 2007/2008 fiscal year shall be remitted upon filing of this Agreement with the Secretary of State.
- 4.3 For subsequent fiscal years, Tempe shall remit payment of the Tempe Contribution no later than June 15 each year, or within 30 days of receipt of each invoice submitted by Mesa in accordance to the provisions of section 5.1 whichever comes later.
- 4.4 Tempe shall further continue to participate and provide direction to the Campaign.

5. **RESPONSIBILITIES OF MESA**

- 5.1. Mesa through its Authorized Representative shall submit to Tempe an invoice for the annual allowable Tempe Contribution.
- 5.2. Mesa through its Authorized Representative will act as lead agent in allocating and administering the payment of the Tempe Contribution to be used for the purposes of the **Water – Use It Wisely™** Campaign.
- 5.3. Mesa through its Authorized Representative shall provide Tempe an annual itemized expense report within 30 days from July 1 each fiscal year. The expense report shall, at a minimum, clearly indicate for each expenditure that included allocations from the Tempe Contribution to the Campaign; the amount of money expended, and the purpose of the expenditure. Thereafter, Tempe shall have 15 days to provide Mesa notice of any exceptions to the report and request an audit thereof. If such notice and request is not received, the report shall be deemed in proper form.

5.4. At the end of each fiscal year, any unexpended Tempe Contribution funds shall be applied toward Campaign activities for the following year in accordance with Section 5.2.

5.5. Upon the expiration or termination of this Agreement, Mesa shall return any unexpended and unallocated Tempe Contribution funds to Tempe within 30 days.

**6. Water – Use It Wisely™ ADVERTISING MATERIALS**

To the extent permitted by law, and subject to the limitations set forth in the Agreement between Mesa and Park dated November 2, 1999 attached hereto and incorporated herein as Exhibit B, during the term of this Agreement and surviving for a period of five (5) years thereafter, Tempe shall have a nonexclusive authorization from Mesa to use, to publicly display, and reproduce in the same or other mediums, and, subject to approval by Mesa's Authorized Representative which will not be unreasonably withheld, to modify any Advertising Materials, which right shall be limited to areas within the State of Arizona.

**7. CLAIMS AGAINST TEMPE - INDEMNIFICATION**

To the extent permitted by law, Mesa agrees to indemnify and hold harmless Tempe and its elected or appointed officials, agents, boards, commissions, employees and representatives, from all suits, including attorney's fees and cost of litigation, actions, loss, damage, expense, cost or claims of any character or any nature arising out of or in connection with any negligent act or willful misconduct of Mesa, its agents or employees, and of any subconsultant, its agents and employees, in the course of the performance or non-performance of any work under the provisions of this Agreement which results directly or indirectly in the injury to, or death of any person or persons, and or damage to property, or arising out of the failure of Mesa or those acting under Mesa to conform to any statute, ordinance, regulation, law or court decree.

**8. CLAIMS AGAINST MESA – INDEMNIFICATION**

To the extent permitted by law, Tempe agrees to indemnify and hold harmless Mesa and its elected or appointed officials, agents, boards, commissions, employees and representatives, from all suits, including attorney's fees and cost of litigation, actions,

loss, damage, expense, cost or claims of any character or any nature arising out of or in connection with any negligent act or willful misconduct of Tempe, its agents or employees, and of any subconsultant, its agents and employees, in the course of the performance or non-performance of any work under the provisions of this Agreement which results directly or indirectly in the injury to, or death of any person or persons, and or damage to property, or arising out of the failure of Tempe or those acting under Tempe to conform to any statute, ordinance, regulation, law or court decree.

9. **AUDIT/RECORDS**

Each party reserves the right at reasonable times to inspect the other party's books and records related to this Agreement. All records pertaining to this Agreement shall be kept on a generally accepted accounting basis for a period of three (3) years following termination of the Agreement.

10. **SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon the Parties and their successors. Neither Party may assign its rights or obligations under this Agreement.

11. **AUTHORIZED REPRESENTATIVES AND NOTICES**

Mesa and Tempe shall each appoint an Authorized Representative to administer the provisions of this Agreement, and notify each other of those appointments. All decisions required to be made by the Authorized Representative shall be in writing. Each party shall notify the other party to this Agreement of any change in the identity of its Authorized Representative. The initial Authorized Representatives are designated below:

To: **City of Mesa**  
Ms. Donna DiFrancesco  
City of Mesa  
Utilities Conservation Specialist  
Utilities Department  
640 N. Mesa Drive  
P. O. Box 1466  
Mesa, AZ 85211  
Telephone: (480) 644-3334  
Fax: (480) 644-2426  
Email: [donna.difrancesco@cityofmesa.org](mailto:donna.difrancesco@cityofmesa.org)

**City of Tempe**  
Mr. Pete Smith  
City of Tempe  
Water Conservation Coordinator  
Water Utilities Department  
255 E. Marigold Lane  
Tempe, AZ 85281  
Telephone: (480) 4350-2668  
Fax: (480)350-8336  
Email: [pete\\_smith@tempe.gov](mailto:pete_smith@tempe.gov)

**12. GOVERNING LAW; FORUM; VENUE**

This Agreement is executed and delivered in the State of Arizona, and the substantive laws of the State of Arizona (without reference to choice of law principles) shall govern their interpretation and enforcement. Any action brought to interpret or enforce any provision of this Agreement that cannot be administratively resolved, or otherwise related to or arising from this Agreement, shall be commenced and maintained in the Superior Court of the State of Arizona, Maricopa County, and each of the parties, to the extent permitted by law, consents to jurisdiction and venue in such courts for such purposes.

**13. MODIFICATION**

Any amendment or modification of this Agreement shall be in writing and effective upon proper signature of the Parties and filed with the Secretary of State.

**14. CONFLICT OF INTEREST**

This Agreement is subject to cancellation by either Party pursuant to A.R.S. Section 38-511.

**15. EFFECTIVE DATE AND TERM OF AGREEMENT**

This Agreement shall become effective when it has been signed by the parties and filed with the Secretary of State, and shall expire on June 30, 2012.

**16. TERMINATION OF AGREEMENT**

This Agreement may be terminated either by mutual consent of the parties or by either party giving the other party 30 calendar days advance written notice of termination of the Agreement.

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

THE CITY OF TEMPE  
a municipal corporation  
Charlie Meyer, City Manager

By: \_\_\_\_\_

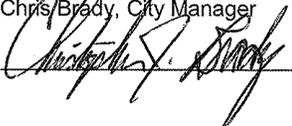
ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM AND WITHIN  
THE POWER AND AUTHORITY GRANTED  
UNDER THE LAWS OF ARIZONA TO THE  
CITY OF TEMPE:

\_\_\_\_\_  
City Attorney

THE CITY OF MESA  
a municipal corporation  
Chris Brady, City Manager

By:  \_\_\_\_\_

ATTEST:

 \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM AND  
WITHIN THE POWER AND AUTHORITY  
GRANTED UNDER THE LAWS OF ARIZONA  
CITY OF MESA:

 \_\_\_\_\_  
City Attorney



WUIW IGA MESA-TEMPE