

# Staff Summary Report



Council Meeting Date: 05/28/09

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

**SUBJECT:** Request approval of a resolution requesting approval and authorization for the Mayor to sign Addendum No. 1 to the Intergovernmental Agreement between the City of Tempe and Tempe Elementary School District No. 3 (C2008-100) for use of the City Fueling Facility at the City of Tempe East Valley Bus Operations and Maintenance Facility.

**DOCUMENT NAME:** 20090528PWRY01 TRANSPORTATION PLANNING (1101-01)  
RESOLUTION NO. 2009.51

**SUPPORTING DOCS:** Yes

**COMMENTS:** N/A

**PREPARED BY:** Robert Yabes, Principal Planner, 350-2734

**REVIEWED BY:** Carlos de Leon, Deputy PW Manager, 350-8527

**APPROVED BY:** Glenn Kephart, Public Works Manager, 350-8205

**LEGAL REVIEW BY:** Judith Morgan: Assistant City Attorney, 350-8227

**FISCAL NOTE:** None.

**RECOMMENDATION:** Recommend approval of Addendum No. 1.

**ADDITIONAL INFO:** Tempe Elementary School District # 3 (TD3) Brogan Center, which houses its school bus and two other major operations for the school district, is undergoing major reconstruction. TD3 requested assistance to use the fueling facility to fuel school buses at City Fuel Facility located next to the East Valley Bus Operations and Maintenance Facility (EVBOM) during the renovation of their facility. This addendum amends the IGA to specify the terms and conditions for the use of the fueling facility by TD3. Tempe School District #3 will be allowed to use the fueling facility until December 2009.

**RESOLUTION NO. 2009.51**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO SIGN AMENDMENT 1 TO THE BUS PARKING INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF TEMPE AND TEMPE ELEMENTARY SCHOOL DISTRICT NO. 3 (C2008-100)**

WHEREAS, on June 23, 2008, the parties entered into Intergovernmental Agreement No. C2008-100, which was recorded as Document No. 2008-0650662 on July 25, 2008 in the records of the Maricopa County Recorder's Office (hereinafter referred to as the "Agreement"); and,

WHEREAS, the City and District, agreed to the specified use of the East Valley Bus Operations and Maintenance Facility ("Facility or EVBOM") concerning parking of school buses and other District vehicles as set forth therein; and,

WHEREAS, the City and District now wish to extend the use of the Facility in addition to the usage currently covered by the Agreement, to include District's fueling of equipment and vehicles owned and operated by the District;

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

That Amendment 1 to the Bus Parking Intergovernmental Agreement is approved, and that the Mayor is authorized to sign the Intergovernmental Agreement for the City of Tempe.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
MAYOR

ATTEST:

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

APPROVED AS TO FORM:

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

**WHEN RECORDED RETURN TO:**

City Clerk  
City of Tempe  
31 East Fifth Street  
P.O. Box 5002  
Tempe, AZ 85280

**ADDENDUM NO. 1  
TO  
INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
THE CITY OF TEMPE  
AND  
TEMPE ELEMENTARY SCHOOL DISTRICT NO. 3**

This Addendum No. 1 to Intergovernmental Agreement No. C2008-100 (“Addendum No. 1”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between City of Tempe, an Arizona municipal corporation (“City”), and Tempe Elementary School District No. 3, a duly organized and existing school district under the laws of Arizona (“District”).

**RECITALS**

WHEREAS, on June 23, 2008, the parties entered into Intergovernmental Agreement No. C2008-100, which was recorded as Document No. 2008-0650662 on July 25, 2008 in the records of the Maricopa County Recorder’s Office (hereinafter referred to as the “Agreement”); and,

WHEREAS, the City and District, agreed to the specified use of the East Valley Bus Operations and Maintenance Facility (“Facility or EVBOM”) concerning parking of school buses and other District vehicles as set forth therein; and,

WHEREAS, the City and District now wish to extend the use of the Facility in addition to the usage currently covered by the Agreement, to include District’s fueling of equipment and vehicles owned and operated by the District;

NOW THEREFORE, it is hereby agreed by and between the parties to amend the Agreement by adding the following additional terms and provisions, as follows:

**A G R E E M E N T**

A. Use of Facility. Use of the Facility shall include District’s use of fueling equipment, solely for equipment and vehicles owned and operated by District. Any and all fueling operations shall be performed by District employees only and permission to utilize fueling equipment shall not extend to any individual or entity outside of District’s employ and

immediate supervision.

1. Fueling shall be restricted to the hours of 7:00 am to 5:00 pm. District must secure prior authorization from City to use Facility during restricted hours. At all times, fueling priority shall always be given to transit and City vehicles.

2. Such fueling operations shall specifically include dispensing of diesel fuel, unleaded fuel and bio-diesel if and when it is available at the Facility. All dispensing of diesel fuel, unleaded fuel and bio-diesel shall be performed only by trained District employees. This Agreement does not grant any fueling privileges for District for liquefied natural and compressed natural gas.

3. As a condition for use of Facility by District, District shall secure contract with Western Refining Wholesale, Inc. ("Western Refining"). Fuel cost and all other incidental costs related to fuel dispensed at the Facility shall be directly paid by District to Western Refining. District and Western Refining agree and covenant to hold City harmless from liabilities arising from contractual disputes between District and Western Refining. Western Refining shall provide City written guarantee that any dispute with District shall not affect delivery of products and contracted services to City.

4. District shall reimburse City all costs associated with replacement and/or repair of all materials, labor, parts and equipments damaged or destroyed due to use or negligence by District. In case of District employee accidents and negligent use resulting in environmental cleanup, City shall use resources at its disposal to clean and repair the damages. All costs associated with the repair, fines, cleanup, equipment and materials replacement costs shall be reimbursed by District.

5. District shall reimburse the City the portion of the cost of additional permits required to accommodate the District's request for fueling at the Facility.

6. Payment shall be due and payable to City fifteen (15) days after submittal to District. In no event shall this Section A.6. be construed to allow District's fuel consumption and/or use of fueling operations owned by City without reimbursement of related costs thereof by District to City, as determined by City in its reasonable discretion.

7. District shall keep written documentation of all Districts' fueling operations at the Facility, as well as all equipment, vehicles and materials stored and/or fueled at the Facility for a period of no less than five (5) years from the date the Agreement is terminated or expires.

B. Insurance. In addition to the insurance coverage requirements and provisions set forth in Section 6 of the original Agreement, the District shall also provide:

1. Contractor's Pollution Liability: Contractor's pollution liability coverage with limits of \$1,000,000 per loss and a \$2,000,000 annual aggregate for losses caused by pollution conditions that arise from the operations of the District and which shall include:

- i. Bodily injury sickness, disease, death, mental anguish or shock;
- ii. Property damage, including physical injury, to or destruction of property including loss of use, clean up costs, and/or loss of use of property (not physically injured or destroyed); and
- iii. Defense costs, including charges and expenses for investigation and claims adjustment.

C. Indemnification. District shall indemnify, defend, and hold harmless the City, its officers and employees, from all suits, actions, or claims of any character brought because of any injury or damage received or sustained by any person, persons or property, on account of the activities contemplated in this Addendum arising out of any act or omission, negligence or misconduct of any agent or employee of the District in carrying out the activities contemplated in this Addendum, including but not limited to environmental waste and/or clean-up. This provision shall survive the termination of this Addendum and the Agreement.

D. Environmental Compliance. District covenants and agrees that it shall, at all times during the term of the Addendum, at its sole cost and expense, comply with and assume sole responsibility and liability under all environmental laws applicable to use of Facility, including fueling operations by the District, its agents, assigns and/or employees. District shall immediately notify City in writing of: (a) any violation of environmental laws relating to the Facility; (b) the escape, release or threatened release of any fuel or other hazardous materials in, on, under or about the Facility. District shall provide written confirmation to City of such notification within twenty-four (24) hours of said incident or violation. District shall provide all warnings of exposure to hazardous materials in, on, under or about the Facility in strict compliance with all applicable federal and state environmental laws. District warrants that at no time it shall use, analyze, generate, manufacture, produce, transport, store, treat, release, dispose of or permit the escape of, or otherwise deposit in, on under or about the Facility, any hazardous materials, or permit or allow any of its agents, assigns or employees to do so. Prior to use of the Facility, District shall provide the City an inventory of all equipment, vehicles and materials, to be stored or fueled at the Facility.

E. Termination. City may terminate this Addendum for any reason by giving the District thirty (30) days' prior notice. In addition, the City may immediately terminate this Addendum upon any act or omission by District that in City's reasonable discretion may constitute a safety hazard or create or contribute to any dangerous condition at the Facility. This Addendum may be terminated pursuant to A.R.S. § 38-511 for any violation of that statute.

F. Legal Compliance. District agrees and covenants that it will comply with any and all applicable governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction insofar as the performance of the work and services pursuant to this Addendum and the Agreement, and all applicable safety and employment laws, rules and regulations, including but not limited to, the Fair Labor Standards Act, the Walsh-Healey Act, and the Arizona Fair and Legal Employment Act, and all amendments thereto, along with all attendant laws, rules and regulations. District acknowledges that a breach of this warranty is a material breach of this Addendum and the Agreement, and District is subject to penalties for

violation(s) of this provision, including termination of the Agreement. City retains the right to inspect the documents of any and all contractors, subcontractors and sub-subcontractors performing work and/or services relating to the Contract to ensure compliance with this warranty.

Any and all costs associated with City inspection are the sole responsibility of District. District hereby agrees to indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations thereof.

Except as specifically modified or amended herein, all other terms and conditions of the Agreement shall remain in full force and effect.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Addendum effective this \_\_\_\_\_ day of \_\_\_\_\_, 2009, as shown by the signatures below.

TEMPE SCHOOL DISTRICT #3

CITY OF TEMPE

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed Name and Title

\_\_\_\_\_  
Typed Name and Title

This Agreement has been reviewed pursuant to A.R.S. §§11-252 and 11-952, by the undersigned attorneys who have determined that it is proper in form and is within the power and authority granted under the laws of the State of Arizona.

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
Tempe School District #3 Attorney

\_\_\_\_\_  
City of Tempe Attorney

ATTEST:

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