

Staff Summary Report



Council Meeting Date: 06/05/08

Agenda Item Number: _____

SUBJECT: Request authorization for the Mayor to sign Intergovernmental Agreement with Tempe Elementary School District #3 to use bus parking spaces at the City of Tempe East Valley Bus Operations and Maintenance Facility.

DOCUMENT NAME: 20080605PWRY01 **TRANSPORTATION PLANNING (1101-01)**

SUPPORTING DOCS: No

COMMENTS: Contract amount for Intergovernmental Agreement totals \$1,200.00.

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: Tempe Elementary School District #3 will pay the City \$100.00 per month for one year.

RECOMMENDATION: Recommend Approval.

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 park 50 school buses the East Valley Bus Operations and Maintenance Facility (EVBOM) during the renovation of their facility. EVBOM is a federally funded transit facility and requires FTA approval for any shared use of the facility. This IGA and lease agreement specifies the terms and conditions for the shared use of the EVBOM by TD3 as approved by the FTA. Tempe School District #3 will be leasing the bus parking spaces for 12 months or until December 2009.

INTERGOVERNMENTAL AGREEMENT
BETWEEN
TEMPE ELEMENTARY SCHOOL DISTRICT NO. 3
AND
THE CITY OF TEMPE

1. This Agreement shall be deemed effective upon and after its approval by the School Board for Tempe Elementary School District No. 3 and by the City Council of the City of Tempe.

2. This Agreement is entered into between the parties pursuant to A.R.S. §11-952. The City of Tempe (CITY) is further authorized to enter into this Agreement pursuant to Tempe City Charter, Section 1.03. Tempe Elementary School District No. 3 (DISTRICT) is further authorized to enter into this Agreement pursuant to A.R.S. §15-302. By their signatures below the attorneys for the City of Tempe and for Tempe Elementary School District No. 3 have determined that the Agreement is in proper form and is within the powers and authorities granted under the laws of the State to its respective public agencies.

3. The purpose of this Agreement is for the CITY to lease to DISTRICT 50 bus parking spaces at the East Valley Bus Operations and Maintenance Facility located at 2050 W Rio Salado Parkway Tempe, Arizona ("FACILITY"). Specifically, DISTRICT has requested that the CITY, and the CITY hereby agrees to, lease to the DISTRICT fifty (50) bus parking spaces within the Facility ("Designated Parking") as parking for the DISTRICT upon the terms and conditions set forth herein, and per the Lease Agreement attached hereto and incorporated herein by this reference, as Exhibit 1. CITY agrees to lease the Designated Parking to and grant DISTRICT a license for the use of the FACILITY for the purpose of parking and driveway, emergency access, and other incidental encroachments, for the sum of One Hundred Dollars per month, payable by DISTRICT on or before the 1st of each month, effective June 1, 2008, through December 31, 2009. No other use of the Facility is permitted.

4. This Agreement and the funding thereof is subject to all applicable Federal Transit Administration requirements and regulations. The funding, program and arrangement proposed by DISTRICT to meet its obligations under this Agreement are more particularly described on Exhibit 2, which is by this reference incorporated herein. The funding and program set forth in Exhibit 2 shall not be altered or amended as to any substantive matter without the prior approval of CITY which will not be unreasonably withheld.

5. Both DISTRICT and CITY will be responsible for maintaining appropriate records and accounts to verify the costs and expenditures associated with and required by their respective obligations and commitments under this Agreement. These financial records shall be available upon request of either party to this Agreement.

6. CITY is a self-insured entity for purposes of liability but it will require DISTRICT and any contractor or subcontractor providing services, to provide CITY with certificates of insurance for the following: Commercial general liability insurance coverage in an amount no less than \$2 million each occurrence and \$2 million in the aggregate for bodily injury, property damage, contractual liability, personal injury, products and completed operations; Commercial Auto Liability of \$2,000,000 combined single limit per accident for bodily injury and property damage, including coverage for owned, hired, and non-owned vehicles as applicable; and Workers' Compensation and Employers Liability statutory limits as required by the State of Arizona. The certificates of insurance must name both the City and DISTRICT as additional insureds, and designate said insurance as primary coverage over the City's self-insurance program. Contractor shall include all subcontractors and sub-subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors and sub-subcontractors shall be subject to all of the requirements stated herein for the Contractor.

The amount and type of insurance coverage requirement set forth herein will in no way be construed as limiting the scope of indemnification in the Lease Agreement between DISTRICT and CITY.

7. DISTRICT and/or its contractor will be responsible to reimburse CITY for damages and/or repairs related to the operation of the Parking Facilities. On a regular basis, DISTRICT coordinator or contractor and CITY will inspect the designated bus parking area. Routine maintenance of the Parking Facility is the responsibility of CITY.

8. This Agreement is effective upon execution; however, the initial term for occupation of the Parking Facilities shall begin on June 1, 2008 and terminate on December 31, 2009. This Agreement may be terminated upon 90 days written notice by either party delivered by hand or by certified mail return receipt requested, to the Tempe City Manager, as if to the CITY, and to the Superintendent for DISTRICT, as if to DISTRICT.

9. DISTRICT shall indemnify, defend and hold harmless CITY, its employees, agents and representatives, from any and all alleged claims, demands, suits, actions, proceedings, loss, cost and damages of every kind and description, including any attorney's fees or litigation expenses, which may be brought or made against or incurred by CITY, its employees, agents, and/or representatives, on account of loss of or damage to any property or for injuries to or death of any person caused by, arising out of, or contributed to, in whole or in part, by reason of any act, omission, professional error, fault, mistake or negligence of DISTRICT, its employees, agents or representatives, in connection with or incidental to the performance of this Agreement. DISTRICT's obligation under this Section does not extend to liability solely arising from or caused by gross negligence or willful misconduct of CITY, or its agents, employees, or representatives. DISTRICT shall require any and all subcontractor(s) and sub-subcontractor(s) to indemnify and hold harmless CITY, its employees, agents, and representatives, relating to or in connection with the Facility and/or this Agreement.

10. This Agreement is subject to cancellation under the provisions of A.R.S. §38-511.

11. If DISTRICT should default in its performance of its obligations under this Agreement, the CITY shall provide written notice of the default, and DISTRICT shall have reasonable time in which to cure said default, but in no event shall that reasonable time exceed thirty (30) days. If no cure is made by DISTRICT, the CITY shall be entitled to remedy the default using any and all rights or remedies at law or in equity available to it, in order to enforce the provisions of this Agreement and recover applicable damages.

12. The relationship between CITY and DISTRICT is that of independent contractors and nothing contained in this Agreement shall be construed as establishing an employer/employee relationship, partnership or joint venture between the parties.

13. DISTRICT may not assign its duties, obligations, rights or responsibilities under this Agreement, without prior express permission from the CITY.

14. This Agreement and all Exhibits thereto, constitute the entire understanding between the parties with respect to the Facility and supersedes any and all prior agreements whether written or oral between the parties. No modifications or amendments shall be made absent a written agreement signed by the parties.

15. The invalidity of any portion or provision of this Agreement shall not affect the validity of any other provision contained herein or the remaining portion(s) of the Agreement.

16. This Agreement shall be governed by the laws of the State of Arizona without regard to conflicts of law jurisprudence and any litigation between the parties regarding this Agreement or the performance of any of the obligations contained in this Agreement shall be initiated in Maricopa County, Arizona.

DATED this _____ day of _____, 2008.

TEMPE ELEMENTARY SCHOOL DISTRICT NO. 3

_____ DATED: _____
Governing Board President

Approved as to form, content and
within the lawful authority of Tempe
Elementary School District No. 3

By _____
Attorney

CITY OF TEMPE

By _____
Mayor

DATED: _____

ATTEST:

City Clerk

Approved as to form, content and
within the lawful authority of
the City of Tempe

By _____
City Attorney

Exhibit 1
LEASE AGREEMENT

LEASE AGREEMENT

THIS LEASE AGREEMENT made this _____ day of _____ 2008, by The City of Tempe, a municipal corporation ("CITY") and Tempe Elementary School District No. 3 ("DISTRICT").

RECITALS

1. CITY owns East Valley Bus Operations and Maintenance Facility located at 2050 W Rio Salado Parkway in Tempe, Arizona,. ("FACILITY"). The FACILITY includes certain bus parking facilities ("Parking Facilities").

2. DISTRICT has requested that the CITY, and the CITY hereby agrees to, lease to the DISTRICT fifty (50) bus parking spaces within the Parking Facilities as school bus parking for the DISTRICT upon the terms and conditions set forth herein. CITY and DISTRICT agree that no DISTRICT employee shall be permitted to park personal vehicles at any of the parking lots at the FACILITY. The parking requested is described in Exhibit A to the Agreement.

3. It is a condition precedent to permitting DISTRICT to park in that portion of the Parking Facilities located at the East Valley Bus Operations and Maintenance Facility , 2050 W Rio Salado Parkway, Tempe, Arizona, that DISTRICT execute and deliver to the CITY this Agreement.

AGREEMENT

1. Term. The CITY hereby leases the Designated Parking to and grants DISTRICT a license for the use of the Parking Facilities for the purpose of parking and driveway, emergency access, and other incidental encroachments, for the sum of One Hundred Dollars per month, payable by DISTRICT on or before the 1st of each month, effective ____ 1, 2008, through December 31, 2009.

2. Hold Harmless. CITY shall not in any manner or for any cause be liable or responsible to DISTRICT, its agents, employees, customers, patrons, visitors, contractors, representatives, or any person in any way affiliated with the DISTRICT for damage to any such party or to any goods or property brought upon the Parking Facilities by any such party, and DISTRICT hereby waives as against CITY any and all suits, claims, damages, losses, costs and expenses which may be incurred by DISTRICT in connection with such injuries (including death) or damages; provided, however, such non-responsibility and waiver shall not apply to injuries to person caused by the negligence or other willful misconduct of CITY. DISTRICT has inspected the Parking Facilities and assumes the risk of all conditions (dangerous or not) in and about the Parking Facilities and waives any and all specific notices of the existence of such conditions.

3. Indemnification. DISTRICT shall indemnify, defend and hold harmless CITY, its employees, agents and representatives, from any and all alleged claims, demands, suits, actions,

proceedings, loss, cost and damages of every kind and description, including any attorney's fees or litigation expenses, which may be brought or made against or incurred by CITY, its employees, agents and representatives, on account of or loss of or damage to any property or for injuries to or death of any person caused by, arising out of, or contributed to, in whole or in part, by reason of any act, omission, professional error, fault, mistake or negligence of DISTRICT, its employees, agents, or representatives, in connection with or incidental to the performance of this Lease or subject Agreement. DISTRICT's obligation under this Section does not extend to liability solely arising from or caused by gross negligence or willful misconduct of CITY, or its agents, employees or representatives. DISTRICT shall require any and all subcontractor(s) and any sub-subcontractor(s) to indemnify and hold harmless CITY, its employees, agents, and representatives, relating to or in connection with the Facility.

4. Maintenance. DISTRICT hereby agrees to maintain the condition, cleanliness, and preservation of the Designated Parking during its use. In the event DISTRICT fails to comply with this covenant, DISTRICT agrees that CITY may perform reasonable self-help with respect to these matters and that DISTRICT will reimburse CITY for such reasonable expenditures resulting from DISTRICT'S use.

5. Prohibited Acts. DISTRICT shall not create or permit a nuisance upon the Parking Facilities or act, perform or demonstrate in any manner considered objectionable to CITY employees, patrons or lessees or which shall in any manner be dangerous or calculated or likely to cause injury to any person or property or result in fire or any other damage to the property of CITY, or of its agents or patrons. In addition, DISTRICT agrees not to charge or collect any fee in connection with the Designated Parking. DISTRICT expressly acknowledges that CITY reserves the right to prohibit any and all activities on the Parking Facilities in its sole discretion.

6. Termination. This Agreement shall survive and be in full force and effect for a period of sixteen (18) months or until December 31, 2009. This Agreement may be terminated upon 90 days written notice by either party delivered by hand or by certified mail return receipt requested, to the, Deputy Public Works Manager, Transportation as if to the CITY, and to the Transportation Director for DISTRICT, as if to DISTRICT. Letters shall be addressed to:

CITY:

Carlos de Leon, Deputy Public Works Manager, Transportation

City of Tempe Public Works Department – Transportation

20 East Sixth Street, 3rd Floor

Tempe, AZ 85281

DISTRICT:

Paul Novak

Transportation Director

Tempe School District 3

1430 W Elna Rae Street

Tempe , AZ 85281

7. No Waiver; Amendment. No failure on the part of the CITY to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy by the CITY preclude any other or further exercise thereof or the exercise of any other right power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by law. The CITY shall not be deemed to have waived any rights hereunder unless such waiver shall be in writing and signed by the CITY. Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to a written agreement entered into between DISTRICT and the CITY.

8. Binding Agreement; Assignments. This Agreement is limited to the parties hereto and shall be binding upon the successors and assigns of either party. Further, it is hereby agreed and acknowledged that DISTRICT may not assign or transfer any of its rights or obligations hereunder (and any such attempted assignment or transfer shall be void) without the prior written consent of the CITY hereto.

9. Attorneys' Fees. DISTRICT hereby agrees to reimburse CITY for its reasonable legal fees incurred in connection with the enforcement of its rights under this Agreement.

10. Survival of Agreement; Severability. All covenants and agreements made by DISTRICT herein shall be considered to have been relied upon by the CITY, and all covenants and agreements made herein shall survive and shall continue in full force and effect until terminated. In case any one or more of the provisions contained in this Agreement should be held invalid, illegal or unenforceable in any respect, no party hereto shall be required to comply with such provision for so long as such provision is held to be invalid, illegal or unenforceable, but the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

11. Rights of Entry. DISTRICT expressly acknowledges that nothing herein shall be deemed to grant to DISTRICT or its successors or assigns any right of entry, easement, or other interest or right in either the Designated Parking or the Parking Facilities.

12. Governing Law. This Lease shall be governed by the laws of the State of Arizona without regard to conflicts of law jurisprudence and any litigation between the parties regarding this Lease or Agreement, or the performance of any of the obligations contained herein shall be initiated in Maricopa County, Arizona.

TEMPE ELEMENTARY SCHOOL DISTRICT NO. 3

_____ DATED: _____
Governing Board President

Approved as to form, content and
within the lawful authority of Tempe
Elementary School District No. 3

By _____
Attorney

CITY OF TEMPE

By _____
Mayor

DATED: _____

ATTEST:

City Clerk

Approved as to form, content and
within the lawful authority of
the City of Tempe

By _____
City Attorney

Exhibit 2

FUNDING AND PROGRAM

CITY Responsibilities:

- 1) Provide access and maintain the designated 50 bus parking area at East Valley Bus Operations and Maintenance Facility located at 2050 W Rio Salado Parkway, Tempe AZ 85281.
- 2) Provide Identification and Access Cards to DISTRICT authorized employees.
- 3) Complaints with the Facility must be addressed to:
RC Noderer
Transit Facility Maintenance Manager
East Valley Bus Operations and Maintenance Facility
2050 W Rio Salado Parkway
Tempe, AZ 85281
- 4) CITY reserves the right to prohibit access to the FACILITY of any DISTRICT employee that does not follow the employee rules and regulations listed below.

DISTRICT Responsibilities:

- 1) Recognize that CITY Transit vehicles always have priority, as required by the rules and regulation of the Federal Transit Administration.
- 2) Pay \$100.00 monthly lease cost. Check shall be made to City of Tempe.
- 3) Pay \$10.00 for each employee identification card issued to DISTRICT personnel.
- 4) Must clean all diesel or lubricant spills at the facility.
- 5) All employee infractions will be reported to :
Paul Novak
Transportation Director
Tempe School District 3
1430 W Elna Rae Street
Tempe AZ 85281
- 6) All assigned employees must comply with all rules and regulations as described below:
 - a. All assigned DISTRICT school bus drivers must follow all posted speed limit signs in the FACILITY.
 - b. Must display Identification Badges at all times when inside the FACILITY.
 - c. Must refrain from bringing and parking personal vehicles at the FACILITY.
 - d. Must not perform major repairs at the FACILITY.
 - e. Must immediately report lost or stolen identification cards and will be charged \$10.00 for replacement.