

CITY COUNCIL AGENDA

CITY COUNCIL CHAMBERS . 11465 WEST CIVIC CENTER DRIVE . AVONDALE, AZ 85323

REGULAR MEETING
February 21, 2012
7:00 PM

**CALL TO ORDER BY MAYOR ROGERS
PLEDGE OF ALLEGIANCE
MOMENT OF REFLECTION**

1 ROLL CALL AND STATEMENT OF PARTICIPATION BY THE CITY CLERK

2 RECOGNITION ITEMS (MAYOR PRESENTATIONS)

a. RECOGNITION OF FUTURE CITY COMPETITION FINALISTS

3 UNSCHEDULED PUBLIC APPEARANCES

(Limit three minutes per person. Please state your name.)

4 CONSENT AGENDA

Items on the consent agenda are of a routine nature or have been previously studied by the City Council at a work session. They are intended to be acted upon in one motion. Council members may pull items from consent if they would like them considered separately.

a. APPROVAL OF MINUTES

1. Work Session of February 6, 2012
2. Regular Meeting of February 6, 2012

b. COOPERATIVE PURCHASING AGREEMENT - SHI INTERNATIONAL CORPORATION

City Council will consider a request to approve a Cooperative Purchasing Agreement with SHI International Corp. for the purchase of software licenses and maintenance services for an annual amount not to exceed \$340,000 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

c. PURCHASE AGREEMENT - HACH COMPANY

City Council will consider a request to approve a sole source purchase agreement with HACH Company for the purchase of laboratory supplies, reagents and analytical instruments in an aggregate total amount of \$375,000 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

d. RESOLUTION 3030-212 – INTERGOVERNMENTAL AGREEMENT WITH ADOT FOR 99TH AVENUE/ MCDOWELL ROAD FIBER OPTIC PROJECT

City Council will consider a resolution approving an Intergovernmental Agreement with the Arizona Department of Transportation for the administration of design and construction of the 99th Avenue/McDowell Road Fiber Optic project, and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

e. **RESOLUTION 3029-212 - INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PHOENIX FOR FEDERAL TRANSIT FUNDING**

City Council will consider a resolution approving an Intergovernmental Agreement with the City of Phoenix for Federal Transit Administration Funding to pass through grant funding for \$1,002,118 and authorize the Mayor or City Manager and City Clerk to execute this agreement. The Council will take appropriate action.

5 **PUBLIC HEARING - PROPOSED EXTENSION OF THE ALTERNATIVE EXPENDITURE LIMITATION (HOME RULE)**

City Council will hold a Public Hearing on the proposed extension of the Alternative Expenditure Limitation (Home Rule). For information and discussion only.

6 **MEMORANDUM OF UNDERSTANDING - AVONDALE POLICE OFFICERS ASSOCIATION**

City Council will consider a request to approve an inaugural Memorandum of Understanding between the City of Avondale and the Avondale Police Officers Association (AvPA) developed pursuant to Ordinance 1323-808 and authorize the City Manager and City Clerk to execute the documents related to this agreement. The Council will take appropriate action.

7 **MEMORANDUM OF UNDERSTANDING - AVONDALE PROFESSIONAL FIREFIGHTERS ASSOCIATION LOCAL 3924**

City Council will consider a request to approve a Memorandum of Understanding with the Avondale Professional Firefighters Association, International Association of Firefighters Local 3924, developed pursuant to Avondale Ordinance 1323-808 and authorize the City Manager and City Clerk to execute the documents related to this agreement. The Council will take appropriate action.

8 **EXECUTIVE SESSION**

a. The Council may hold an executive session pursuant to Ariz. Rev. Stat. § 38-431.03 (A)(1) for discussion regarding the City Judge's annual evaluation.

9 **ADJOURNMENT**

Respectfully submitted,



Carmen Martinez
City Clerk

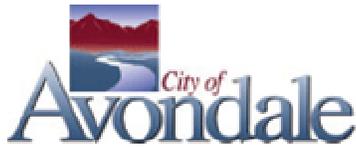
Individuals with special accessibility needs, including sight or hearing impaired, large print, or interpreter, should contact the City Clerk at 623-333-1200 or TDD 623-333-0010 at least two business days prior to the Council Meeting.

Personas con necesidades especiales de accesibilidad, incluyendo personas con impedimentos de vista u oído, o con necesidad de impresión grande o interprete, deben comunicarse con la Secretaria de la Ciudad at 623-333-1200 o TDD 623-333-0010 cuando menos dos días hábiles antes de la junta del Concejo.

Notice is hereby given that pursuant to A.R.S. § 1-602.A.9, subject to certain specified statutory exceptions, parents have a right to consent before the State or any of its political subdivisions make a video or audio recording of a minor child. Meetings of the City Council may be audio and/or video recorded and, as a result, proceedings in which children are present may be subject to such recording. Parents, in order to exercise their rights may either file written consent with the City Clerk to such recording, or take personal action to ensure that their child or children are not present when a recording may be made. If a child is present at the time a recording is made, the City will assume that the rights afforded parents pursuant to A.R.S. § 1-602.A.9 have been waived.

De acuerdo con la ley A.R.S. § 1-602.A.9, y sujeto a ciertas excepciones legales, se da aviso que los padres tienen derecho a dar su consentimiento antes de que el Estado o cualquier otra entidad política haga grabaciones de video o audio de un menor de edad. Las juntas del Concejo de la Ciudad pueden ser grabadas y por consecuencia, existe la posibilidad de que si hay menores de edad presentes éstos aparezcan en estos videos o grabaciones de audio. Los padres puedan ejercitar su derecho si

presentan su consentimiento por escrito a la Secretaria de la Ciudad, o pueden asegurarse que los niños no estén presentes durante la grabación de la junta. Si hay algún menor de edad presente durante la grabación, la Ciudad dará por entendido que los padres han renunciado sus derechos de acuerdo a la ley contenida A.R.S. § 1-602.A.9.



CITY COUNCIL REPORT

SUBJECT:
Recognition of Future City Competition Finalists

MEETING DATE:
February 21, 2012

TO: Mayor and Council
FROM: Sue McDermott, P.E., Development Services Director/City Engineer, 623-333-4211
THROUGH: Charlie McClendon, City Manager

PURPOSE:

The Mayor and City Council will recognize Future City Teams from Garden Lakes Elementary School and Canyon Breeze Elementary School.

BACKGROUND:

The Future City Competition is a national program sponsored by the engineering community in conjunction with Engineers Week. This four-month program promotes science, technology, engineering and math (STEM) to 6th, 7th, and 8th grade students through hands-on, real world applications. The competitions include modeling through the use of the SimCity computer program, an essay, scale model, and oral presentation. In past years, staff from the Engineering Division has acted as mentors for various Avondale school teams.

On January 27th, ninety-two (92) Future City teams from the southwest region presented their "Fuel Your City" models to a panel of judges. For this year's competition, teams were required to research and write an essay in which they choose one (1) alternative energy source and design a way to generate electric power for their city that does not deplete natural resources and has limited impact on the environment. The first place team would then move onto the national competition in Washington D.C.

Two (2) Avondale teams placed in the top five (5) in the finals competition:

2nd Place - Garden Lakes Elementary School

Future City: Maguma Shima

Team Members: Amanda Flores, McKenna Byrne, Abbie Prescott

Teacher: Jill Helland

Engineer Mentor: Tania Ibarra

3rd Place - Canyon Breeze Elementary School

Future City: La Belleza de la Costa

Team Members: Ian Balsler, Dominique Danache, Mikayla Dean

Teachers: Kerry Pohlmeier and Autumn Castillo

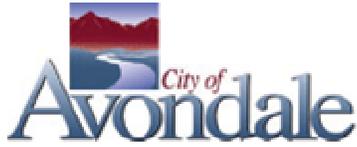
Engineer Mentor: Alex Macke

Team members, teachers, and Jason Fort, representing the Future City executive committee, are present for the recognition.

ATTACHMENTS:

[Click to download](#)

No Attachments Available



CITY COUNCIL REPORT

SUBJECT:
APPROVAL OF MINUTES

MEETING DATE:
February 21, 2012

TO: Mayor and Council
FROM: Carmen Martinez, City Clerk (623) 333-1214
THROUGH: Charlie McClendon, City Manager

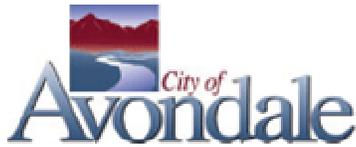
PURPOSE:

1. Work Session of February 6, 2012
2. Regular Meeting of February 6, 2012

ATTACHMENTS:

[Click to download](#)

No Attachments Available



CITY COUNCIL REPORT

SUBJECT:

Cooperative Purchasing Agreement - SHI
International Corporation

MEETING DATE:

February 21, 2012

TO: Mayor and Council

FROM: Rob Lloyd, Chief Information Officer (623) 333-5011

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council approve a Cooperative Purchasing Agreement with SHI International Corp. for the purchase of software licenses and maintenance services for an annual amount not to exceed \$340,000 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

BACKGROUND:

City departments typically purchase software licenses, maintenance, and support agreements directly from vendors. Essential productivity software, specialized engineering and spatial data software support, telecommunications hardware maintenance, and other services are most often processed individually.

In June 2011, the State of Arizona awarded a contract to SHI International Corp. ("SHI") to serve as the State's authorized value-added reseller. Local governments have access to Arizona's contracting vehicle under the terms of the State contract. This item sets an agreement to allow the City of Avondale to use the State contract to purchase covered products and services within preset terms.

DISCUSSION:

Departments currently purchase a significant portion of the City's software licenses, maintenance, and support agreements directly from vendors. Ensuing negotiations and reviews of agreements occur independently and require significant work from multiple departments. Consolidating purchases of software licenses and maintenance services under the State of Arizona's contract and authorized value-added reseller will allow the City of Avondale to minimize repeat work and speed approved purchases for essential technology tools and services.

Software licenses and services covered include the City's contracts with Microsoft, Cisco, Adobe, Autodesk, ESRI, and other vendors that Council has approved contracts with in the past. In addition, advantageous pricing terms were negotiated by the State for many software products and services.

This request is for approval of a purchase agreement lasting up to the duration of the State of Arizona contract, or five years, pending renewal of the State contract and City agreement.

BUDGETARY IMPACT:

For Fiscal Year 2011-12 through 2015-16, annual expenditures may not exceed \$340,000 across all departments. The total for may not exceed \$1,700,000 for the full term of the State contract. Expenditures will depend on allocation of funds by Council in the City's budget process and on supporting revenues existing to make purchases.

RECOMMENDATION:

Staff recommends that City Council approve the purchase agreement, under the State of Arizona contract, for consolidated purchase of software and support services from SHI International Corporation in an annual amount not to exceed \$340,000, and authorizing the Mayor or City Manager and City Clerk to execute the agreement.

ATTACHMENTS:

Click to download

 [Cooperative Purchasing Agreement](#)

**COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
SHI INTERNATIONAL CORP.**

THIS COOPERATIVE PURCHASING AGREEMENT (this "Agreement") is entered into as of February 21, 2012, between the City of Avondale, an Arizona municipal corporation (the "City") and SHI International Corp., a New Jersey corporation (the "Contractor").

RECITALS

A. After a competitive procurement process, the State of Arizona ("State"), entered into Contract No. ADSP011-007500 dated June 17, 2011, as amended, (collectively, the "State Contract") for the Contractor, an authorized software value added reseller, to provide software licenses and maintenance services. A copy of the State Contract is attached hereto as Exhibit A and incorporated herein by reference.

B. The City is permitted pursuant to Section 25-24 of the City Code to purchase such materials and services under the State Contract, at its discretion and with the agreement of the awarded Contractor, and the State Contract permits its cooperative use by other public entities including the City.

C. The City and the Contractor desire to enter into this Agreement for the purpose of (i) acknowledging a cooperative contractual relationship under the State Contract, (ii) establishing the terms and conditions by which the Contractor may resell to the City software licenses and maintenance services, as more particularly set forth in Section 2 below on an "as-required" basis (the "Materials and Services") and (iii) setting the maximum aggregate amount to be expended pursuant to this Agreement related to the Materials and Services.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Contractor hereby agree as follows:

1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until February 21, 2013 (the "Initial Term"), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement or the State Contract. After the expiration of the Initial Term, this Agreement may be renewed for up to four successive one-year terms (each, a "Renewal Term") if (i) it is deemed in the best interests of the City, subject to availability and appropriation of funds for renewal in each subsequent year, (ii) the term of the State Contract has been extended, (iii) at least 30 days prior to the end of the then-current term of the Agreement, the Contractor requests, in writing, to extend the Agreement for an additional one-year term and (iv) the City approves the additional one-year term in writing (including any price adjustments approved as part of the State

Contract), as evidenced by the City Manager's signature thereon, which approval may be withheld by the City for any reason. The Contractor's failure to seek a renewal of this Agreement shall cause the Agreement to terminate at the end of the then-current term of this Agreement; provided, however, that the City may, at its discretion and with the agreement of the Contractor, elect to waive this requirement and renew this Agreement. The Initial Term and any Renewal Term(s) are collectively referred to herein as the "Term." Upon renewal, the terms and conditions of this Agreement shall remain in full force and effect.

2. Scope of Work. This is an indefinite quantity and indefinite delivery Agreement for Materials and Services under the terms and conditions of the State Contract. The City does not guarantee any minimum or maximum number of purchases will be made pursuant to this Agreement. Purchases will only be made when the City identifies a need and proper authorization and documentation have been approved. For purchase(s) determined by the City to be appropriate for this Agreement, the Contractor shall provide the Materials and Services to the City in such quantities and configurations as may be agreed upon between the parties in writing, in the form of a written invoice, quote, work order or other form of written acknowledgment between the parties describing the name of the software publisher, the materials to be provided, the support and maintenance services, if any, and the applicable period, including any possible renewals, for any support or maintenance services (each, a "Work Order"). Each Work Order approved and accepted by the parties pursuant to this Agreement shall (i) contain a reference to this Agreement and the State Contract and (ii) be attached hereto as Exhibit B and incorporated herein by reference. Work Orders submitted without referencing this Agreement and the State Contract will be subject to rejection. By signing this Agreement, Contractor acknowledges and agrees that Work Order(s) containing unauthorized exceptions, conditions, limitations, or provisions in conflict with the terms of this Agreement or the State Contract, other than City's project-specific requirements, are hereby expressly declared void and shall be of no force and effect.

3. Compensation. The City shall pay Contractor for the Initial Term and for each subsequent Renewal Term, if any, an annual aggregate amount not to exceed \$340,000.00 for Materials and Services at the unit rates as set forth in the State Contract. The maximum aggregate amount for this Agreement shall not exceed \$1,700,000.00.

4. Payments. The City shall pay the Contractor based upon acceptance and delivery of Materials and/or Services performed and completed to date, and upon submission and approval of invoices. Each invoice shall (i) contain a reference to this Agreement and State Contract and (ii) document and itemize all work completed to date. The invoice statement shall include a record of Materials delivered, time expended and work performed in sufficient detail to justify payment. Additionally, invoices submitted without referencing this Agreement and the State Contract will be subject to rejection and may be returned.

5. Records and Audit Rights. To ensure that the Contractor and its subcontractors are complying with the warranty under Section 6 below, Contractor's and its subcontractor's books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Contractor and its subcontractors' employees who perform any work or services pursuant to this Agreement (all of the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to

audit and/or reproduction during normal working hours by the City, to the extent necessary to adequately permit (i) evaluation and verification of any invoices, payments or claims based on Contractor's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (ii) evaluation of the Contractor's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in Section 6 below. To the extent necessary for the City to audit Records as set forth in this Section, Contractor and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the City shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the City to Contractor pursuant to this Agreement. Contractor and its subcontractors shall provide the City with adequate and appropriate workspace so that the City can conduct audits in compliance with the provisions of this Section. The City shall give Contractor or its subcontractors reasonable advance notice of intended audits. Contractor shall require its subcontractors to comply with the provisions of this Section by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

6. E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Contractor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Contractor's or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

7. Scrutinized Business Operations. Pursuant to ARIZ. REV. STAT. §§ 35-391.06 and 35-393.06, the Contractor certifies that it does not have scrutinized business operations in Sudan or Iran. For the purpose of this subsection the term "scrutinized business operations" shall have the meanings set forth in ARIZ. REV. STAT. §§ 35-391 or 35-393, as applicable. If the City determines that the Contractor submitted a false certification, the City may impose remedies as provided by law including terminating this Agreement.

8. Conflict of Interest. This Agreement may be canceled by the City pursuant to ARIZ. REV. STAT. § 38-511.

9. Applicable Law; Venue. In the performance of this Agreement, Contractor shall abide by and conform to any and all laws of the United States, the State of Arizona and the City of Avondale, including, but not limited to, federal and state executive orders providing for equal employment and procurement opportunities, the Federal Occupational Safety and Health Act and any other federal or state laws applicable to this Agreement. This Agreement shall be governed by the laws of the State of Arizona and a suit pertaining to this Agreement may be brought only in courts in Maricopa County, Arizona.

10. Agreement Subject to Appropriation. This Agreement is subject to the provisions of ARIZ. CONST. ART. IX, § 5 and ARIZ. REV. STAT. § 42-17106. The provisions of this Agreement for payment of funds by the City shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. The City shall be the sole

judge and authority in determining the availability of funds under this Agreement and the City shall keep the Contractor fully informed as to the availability of funds for this Agreement. The obligation of the City to make any payment pursuant to this Agreement is a current expense of the City, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the City. If the City Council fails to appropriate money sufficient to pay the amounts as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of then-current fiscal year and the City and the Contractor shall be relieved of any subsequent obligation under this Agreement.

11. Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, any City-approved Work Orders, invoices and the State Contract, the documents shall govern in the order listed herein. Notwithstanding the foregoing, and in conformity with Section 2 above, unauthorized exceptions, conditions, limitations or provisions in conflict with the terms of this Agreement or the State Contract (collectively, the "Unauthorized Conditions"), other than the City's project-specific requirements, are expressly declared void and shall be of no force and effect. Acceptance by the City of any Work Order or invoice containing any such Unauthorized Conditions or failure to demand full compliance with the terms and conditions set forth in this Agreement or under the State Contract shall not alter or relieve Contractor from, nor be construed or deemed a waiver of, its requirements and obligations in the performance of this Agreement.

12. Subcontractor Contracts. Contractor shall provide the software support and maintenance services as set forth in the State Contract. The terms and conditions of the software support and maintenance provided to the City by one of the Contractor's subcontractors shall be governed by the terms and conditions of the State Contract. In the event that any other agreement related to software support and maintenance services, in any form (including a "click wrap" agreement), is provided to the City by one of the Contractor's subcontractors and such agreement contains terms and conditions in conflict with the terms and conditions of the State Contract, the State Contract terms and conditions shall govern such agreements.

13. Indemnification; Insurance. To the extent provided under the State Contract, the City shall be afforded all of the rights, privileges, insurance coverage and indemnifications afforded to the State, and such rights, privileges, insurance coverage and indemnifications shall inure and apply with equal effect to the City under this Agreement including, but not limited to, the Contractor's obligation to provide the indemnification and insurance. In any event, the Contractor shall indemnify, defend and hold harmless the City and each council member, officer, employee or agent thereof (the City and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, in connection with the work or services of the Contractor, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

“City”

CITY OF AVONDALE, an
Arizona municipal corporation

Charles P. McClendon, City Manager

ATTEST:

Carmen Martinez, City Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on _____, 2012,
by Charles P. McClendon, the City Manager of the CITY OF AVONDALE, an Arizona
municipal corporation, on behalf of the City of Avondale.

Notary Public in and for the State of Arizona

(affix notary seal here)

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

"Contractor"

SHI INTERNATIONAL CORP., a New Jersey corporation

By: Natalie Castagno

Name: Natalie Castagno

Title: Contract Specialist

(ACKNOWLEDGMENT)

STATE OF New Jersey)
COUNTY OF Somerset) ss.

This instrument was acknowledged before me on February 7, 2012, by Natalie Castagno as Contract Specialist of SHI INTERNATIONAL CORP., a New Jersey corporation, on behalf of the corporation.

Marc A. Poole

Notary Public in and for the State of NJ

(affix notary seal here)

MARC A. POOLE
ID # 2408905
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 5/25/2016

EXHIBIT A
TO
COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
SHI INTERNATIONAL CORP.

[State Contract]

See following pages.

The documents listed on the following pages comprise the State Contract and are incorporated herein by reference.



Master Blanket Purchase Order ADSP011-007500

Header Information

Purchase Order Number:	ADSP011-007500	Release Number:	0	Short Description:	Software Value Added Reseller Product and Services
Status:	3PS - Sent	Purchaser:	Terri Johnson	Receipt Method:	Quantity
Fiscal Year:	2012	PO Type:	Blanket	Minor Status:	
Organization:	State Procurement Office	Location:	STRGC - SPO Strategic	Type Code:	Statewide
Department:	ADSP0 - State Procurement Office	Entered Date:	06/17/2011 03:16:10 PM	Control Code:	
Alternate ID:		Retainage %:	0.00%	Discount %:	0.00%
Print Dest Detail:	If Different	Release Type:	Direct Release	Pcard Enabled:	Yes
Catalog ID:		Tax Rate:		Actual Cost:	\$0.00
Contact Instructions:					
Master Blanket/Contract End Date (Maximum):	06/02/2016 05:01:00 PM				
Project No.:					
Building Code:					
Cost Code:					
Special Purchase Types:					
PIJ NUMBER:					
Attachments:	PO Terms & Conditions, ADSP011-007500 SHI Participating Addendum, ADSP011-00000358-3 WSCA Master Price Agreement, SHI Revised Pricing August 2011, ADSP011-007500 A1, Adobe CLP Government, Adobe CLP Education				

Primary Vendor Information & PO Terms

Vendor:	000000396 - SHI INTERNATIONAL CORP Amelia Edmondson 33 Knightsbridge Road Piscataway, NJ 08854 US Email:	Payment Terms:	Net 30	Shipping Method:	Best Way
		Shipping	F.O.B., Origin	Freight	Freight Prepaid

teamarizona@shi.com
 Phone: (303)723-5256
 FAX: (866)941-6845

Terms:

Terms:

PO Acknowledgements:	Document	Notifications	Acknowledged Date/Time
	Purchase Order	Emailed to katie_okane@shi.com at 07/26/2011 12:57:27 PM	07/28/2011 05:14:18 PM
	Change Order 1	Emailed to amelia_edmondson@shi.com at 08/16/2011 08:38:33 AM	08/16/2011 02:24:10 PM
	Change Order 2	Emailed to teamarizona@shi.com at 08/26/2011 01:48:09 PM	08/26/2011 04:26:22 PM

Master Blanket/Contract Vendor Distributor List

Vendor ID	Alternative ID	Vendor Name	Preferred Delivery Method	Vendor Distributor Status
<u>000000396</u>	12230096480	SHI INTERNATIONAL CORP	Email	Active

Master Blanket/Contract Controls

Master Blanket/Contract Begin Date: 06/03/2011 **Master Blanket/Contract End Date:** 06/02/2013
Cooperative Purchasing Allowed: Yes

Organization	Department	Dollar Limit	Dollars Spent to Date	Minimum Order Amount
ALL ORG - Organization Umbrella Master Control	AGY - Agency Umbrella Master Control	\$0.00	\$4,115,826.20	\$0.00

Item Information

1-5 of 17
 1 2 3 4

Print Sequence # 1.0, Item # 1: Microsoft Products, including ELA and SA 3PS - Sent

NIGP Code: 208-80
 Software, Microcomputer (Not Otherwise Classified)

Receipt Method	Qty	Unit Cost	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Total Cost
Quantity	1.0	\$0.00	EA - Each	0.00	\$0.00		\$0.00	\$0.00

Manufacturer: Brand: Model:
 Make: Packaging:
 Project No.:
 Building Code:
 Cost Code:

Print Sequence # 2.0, Item # 2: Adobe Products, including CLP, and ELA as applicable 3PS - Sent

NIGP Code: 208-80
 Software, Microcomputer (Not Otherwise Classified)

Receipt Method	Qty	Unit Cost	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Total Cost
Quantity	1.0	\$0.00	EA - Each	0.00	\$0.00		\$0.00	\$0.00

Manufacturer: Brand: Model:
 Make: Packaging:
 Project No.:
 Building Code:
 Cost Code:

Print Sequence # 3.0, Item # 3: IBM software products 3PS - Sent

NIGP Code: 208-80
 Software, Microcomputer (Not Otherwise Classified)

Receipt Method	Qty	Unit Cost	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Total Cost
Quantity	1.0	\$0.00	EA - Each	0.00	\$0.00		\$0.00	\$0.00

Manufacturer: Brand: Model:
 Make: Packaging:
 Project No.:
 Building Code:
 Cost Code:

Print Sequence # 4.0, Item # 4: Symantec Software Products 3PS - Sent

NIGP Code: 208-80
 Software, Microcomputer (Not Otherwise Classified)

Receipt Method	Qty	Unit Cost	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Total Cost
Quantity	1.0	\$0.00	EA - Each	0.00	\$0.00		\$0.00	\$0.00

Manufacturer: Brand: Model:
 Make: Packaging:
 Project No.:
 Building Code:
 Cost Code:

Print Sequence # 5.0, Item # 5: Intel Software Products 3PS - Sent

NIGP Code: 208-80
 Software, Microcomputer (Not Otherwise Classified)

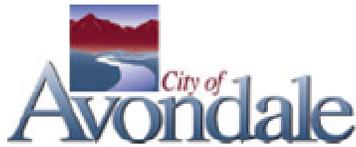
Receipt Method	Qty	Unit Cost	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Total Cost
Quantity	1.0	\$0.00	EA - Each	0.00	\$0.00		\$0.00	\$0.00

Manufacturer: Brand: Model:

EXHIBIT B
TO
COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
SHI INTERNATIONAL CORP.

[Work Orders]

See following pages (to be attached subsequent to execution).



CITY COUNCIL REPORT

SUBJECT:

Purchase Agreement - HACH Company

MEETING DATE:

February 21, 2012

TO: Mayor and Council

FROM: Wayne Janis, P.E., Public Works Director (623) 333-4444

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council authorize sole source procurement of laboratory supplies, reagents, and analytical instruments from HACH Company for an amount not to exceed an aggregate total of \$375,000 and to authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

BACKGROUND:

In the Water Production, Water Reclamation, and Water Quality divisions there is a need for repetitive and frequent use of various laboratory supplies, reagents and instrumentation in the normal process control procedures and monitoring of water quality and treated effluents. Because such monitoring and procedures is paramount, quality and reliability of the commodities and instruments purchased must be proven, and lab tests reproducible to lend credibility and confidence in the actions taken as a result. The HACH Company offers such products and instrumentation to be used in operations and water quality monitoring. To change the types of laboratory equipment, supplies, instrumentation and procedures in these divisions would create issues of trust in demonstrated lab results, and it would also create a financial burden as so many supplies, reagents, and instruments would need to be changed. It is imperative to have HACH Company provide the required supplies, reagents, and instruments as they are the sole source manufacturer and distributor of these items already in use within our operations.

DISCUSSION:

In order to maintain proper process control, water quality monitoring, and permit requirements, the Water Production, Water Quality, and Water Reclamation divisions believe it is necessary that procurement is made through HACH Company. No other vendor in the state can offer the required laboratory supplies, reagents, and instrumentation without adding significant mark-up pricing. For this reason staff is requesting that Council approve the sole source procurement through HACH Company. Notice of the planned sole source procurement was published in the West Valley View on December 27th 2011, as well as the AZ Business Gazette on January 3rd 2012 as required by the city's procurement code. No protests were received. The Water Resources Staff estimates \$75,000 annually in expenditures for these types of purchases, for a cumulative total over the contract period not to exceed \$375,000, subject to budget approval.

BUDGETARY IMPACT:

The funding will be found in line items 501-9115-00-7440 for Water Quality, 501-9122-00-7490, for the Production division, and 503-9230-00-7150 for the Water Reclamation division.

RECOMMENDATION:

Staff is recommending that the City Council authorize sole source procurement of laboratory supplies, reagents, and analytical instruments from HACH Company for an amount not to exceed an

aggregate total of \$375,000 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

ATTACHMENTS:

Click to download

 [Sole Source Letter](#)

 [HACH Contract](#)

HACH COMPANY

PO Box 389 • Loveland, Colorado 80539-0389

Phone 800-227-4224 or 970-669-3050

Fax 970-669-2932

<http://www.hach.com>



Be Right™

**City of Avondale
Attn: Jane Parker
399 E Lower Buckeye Rd
Avondale, AZ 85323**

December 7, 2011

Dear Jane,

This letter is to confirm that Hach Company is the sole manufacturer and distributor within the United States of the following equipment:

Potassium Iodide Refill for Swiftest, 50 grams, DPD Total Chlorine, 25ml powder pillows, 100-Pack, Acetate Buffer Solution pH 4.0 (total and/or Free Chlorine, Amperometric Method) 100 mL, Amver Test N Tube Reagent Set, Low-Range Ammonia, 0-2.5mg/L, 50-Pack, Amver Test N Tube Reagent Set, High-Range Ammonia, 0-50 mg/L, 50-Pack, NitraVer Test N Tube Reagent Set, Nitrate-Nitrogen, 0-30 mg/L, 50 Pack, NitraVer Test N Tube Reagent Set, Nitrite-Nitrogen, 0-0.5000 mg/L, 50-Pack, Solution to store pH electrodes, 500mL, PAO Standard, 0.00564N, 1000 mL, Sulfuric acid 19.2n, 100mL, 2100AN Laboratory Turbidimeter, AutoCAT 9000 Titrator, DR 2800 Spectrophotometer, DR 890 Colorimeter, HQ30d Multi-Parameter Meter, LDO Sensor Cap Replacement HQd Series, KTO: Shroud Kit, Std Probe, HQd Series, sensION Bench Top pH Meter, IntelliCAL LDO Probe-Standard (3 m cable), IntelliCAL LDO Probe-Rugged (5 m cable), IntelliCAL pH Probe-Standard (3 m cable), IntelliCAL ORP Probe- Standard and Refillable (3 m cable), IntelliCAL Conductivity Probe - Standard (3 m cable), pH 4.01 Color-Coded Red (NIST), 4L, pH 7.00 Color-Coded Yellow (NIST), 4L, pH 10.01 Color-Coded Blue (NIST), 4L, 3-Pack 4L, pH Buffer Solution (4.01, 7.00, 10.01), Flask, Filtering, Glass, 1000 mL, TenSette Single Channel Pipet 0.1-1.0 mL, TenSette Single Channel Pipet 1.0-10 mL, COD Reactor 15 vials x 16mm (Single Block) 115 Vac, COD Digestion Vials 16mm, Low Range 3-150 mg/L, 150-Pack, COD Digestion Vials 16mm, High Range 20-1500 mg/L, 150-Pack, LDO Probe, LDO Probe Pole Mounting Kit, sc1000 Multi-parameter Universal Controller Display Module with Modbus TCP/IP and GSM/GPRS protocols (for use in USA), Reagent Set, Total Chlorine, Sodium Hydroxide Solution 4.5N, 1000ml, Sodium Hydroxide Solution 100N, 1000ml, Chloride Removal Cartridge Assembly 25-Pack, Hydroxylamine Hydrochloride Solution 100 g/L, Ethylene Glycol, 1000ml, Ferric Ion Solution, 100mL, Nitrate Nitrogen Standard Solution 100mg/L, 500mL, COD Standard Solution, 300mg/L, 200mL, Sulfuric acid 0.020N, 1000mL, Ferric Chloride-Sulfuric Acid Solution for Volatile Acids, 1000mL, Sulfuric Acid Solution 19.2N, 100mL, Standard Hydrochloric Acid, 0, 10N, 1000 mL, Sulfuric Acid Solution 19.2N, 500mL, Iodine

Standard Solution 0, 0282N, 1000mL, Sodium Thiosulfate Standard Solution Stabilized, 0,00564N, 1000mL, Actetate Buffer Solution, pH4, 100mL, Pipet Tips 1.0-10.0mL, non-sterile, 250-Pack, Pipet Tips 0.1-1.0mL, non-sterile, 1000-Pack, Distillation Heater and Support Apparatus, LDO Probe Replacement Sensor Cap, StablCal Set for 2100AN/AN IS, Gelex Secondary Standard Set for 2100AN/AN IS, Lamp Replacement Kit for 2100AN Turbidity Meter, 1720ETurbidity analyzer, SC200 Universal Controller 2 Digital, and pH probe.

Associated catalog numbers are: 107760, 1406499, 1490932, 2604545, 2606945, 2605345, 2608345, 2756549, 199953, 203832, 4700100, 5008100, DR2800-01B1, 4847000, HQ30d53000000, 5811200, 5832500, 5175013, LDO010103, LDO10105, pHC28103, MTC10103, CDC40103, 2283456, 2283556, 2283656, 2507200, 54653, 1970001, 1970010, LTV082.53.40001, 2125815, 2125915, 5790000, 5794400, LXV402.99.11002, 2557000, 204053, 19153, 2661825, 81842, 203953, 2212242, 194749, 1218629, 20353, 204253, 203832, 1481253, 203849, 2333353, 2408853, 1490932, 2199725, 2185628, 2274400, 5791100, 2659505, 2589200, 4708900, 6010101, LXV404.99.00552 and DPD1P1.

Please note that the items highlighted in yellow on the attached spreadsheet are not sole source items. Those are not included in this letter.

Thank you for your interest in Hach Company products. If we can help in any way, please call us at 1-800-227-4224.

Sincerely,

Carol Burrill

Carol Burrill
Field Sales Support Specialist

Facility location: 5600 Lindbergh Drive • Loveland, Colorado USA 80537-8998



polymetron



**PURCHASE AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
HACH COMPANY**

THIS PURCHASE AGREEMENT (this “Agreement”) is entered into as of February 6, 2012, between the City of Avondale, an Arizona municipal corporation (the “City”), and HACH Company, a Delaware corporation (the “Vendor”).

RECITALS

A. The City desires to purchase water quality testing equipment and related supplies (the “Equipment”) for use by the City’s Department of Water Resources, Water Production Division.

B. Pursuant to the Avondale City Code, Section 25-23, the City has determined that the Vendor is the reasonable and practical source to provide the Equipment and it would be impractical to solicit bids through the formal bid solicitation procedures.

C. The City and the Vendor desire to enter into this Agreement for the purpose of (i) establishing the terms and conditions by which the Vendor may provide the City with the Equipment, as more particularly set forth in Section 2 below on an “as-required” basis, and (ii) setting the maximum aggregate amount to be expended pursuant to this Agreement related to the Equipment.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Vendor hereby agree as follows:

1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until February 5, 2013 (the “Initial Term”), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement. After the expiration of the Initial Term, this Agreement may be renewed for up to four successive one-year terms (each, a “Renewal Term”) if (i) it is deemed in the best interests of the City, subject to availability and appropriation of funds for renewal in each subsequent year, (ii) at least 30 days prior to the end of the then-current term of the Agreement, the Vendor requests in writing to extend the Agreement for an additional one-year term and (iii) the City approves the additional one-year term in writing, as evidenced by the City Manager’s signature thereon, which approval may be withheld by the City for any reason. The Vendor’s failure to seek a renewal of this Agreement shall cause the Agreement to terminate at the end of the then-current term of this Agreement; provided, however, that the City may, at its discretion and with the agreement of the Vendor, elect to waive this requirement and renew this Agreement. The Initial Term and any

Renewal Term(s) are collectively referred to herein as the “Term.” Upon renewal, the terms and conditions of this Agreement shall remain in full force and effect.

2. Purchase of Equipment. This is an indefinite quantity and indefinite delivery Agreement for Equipment as more particularly described in the Equipment Lists, attached hereto as Exhibit A and incorporated herein by reference. The City does not guarantee any minimum or maximum number of purchases will be made pursuant to this Agreement. Purchases will only be made when the City identifies a need and proper authorization and documentation have been approved. For purchase(s) determined by the City to be appropriate for this Agreement, the Vendor shall provide the Equipment to the City in such quantities and configurations as may be agreed upon between the parties in writing, in the form of a written invoice, quote, work order or other form of written acknowledgment between the parties describing the equipment to be delivered (each, an “Equipment Order”). Each Equipment Order approved and accepted by the parties pursuant to this Agreement shall (i) contain a reference to this Agreement and (ii) be attached hereto as Exhibit B and incorporated herein by reference. Equipment Order(s) submitted without referencing this Agreement will be subject to rejection. By signing this Agreement, Vendor acknowledges and agrees that Equipment Order(s) containing unauthorized exceptions, conditions, limitations, or provisions in conflict with the terms of this Agreement, other than City’s project-specific requirements, are hereby expressly declared void and shall be of no force and effect.

3. Compensation. The City shall pay Vendor for the Initial Term and for each subsequent Renewal Term, if any, an annual aggregate amount not to exceed \$75,000.00 for the Equipment at the unit rates set forth in the Vendor’s current Equipment catalog(s). The maximum aggregate amount for this Agreement shall not exceed \$375,000.00.

4. Payments. The City shall pay the Vendor monthly, based upon acceptance and delivery of Equipment to date, and upon submission and approval of invoices. All invoices shall document and itemize all work completed to date. The invoice statement shall include a record of Equipment delivered, time expended and work performed in sufficient detail to justify payment.

5. Freight. If applicable, unless otherwise agreed to in writing, signed by the City Manager or designee, all delivery terms are FOB Destination and are to be prepaid. All other freight charges are to be prepaid and charged on the invoice. Vendor shall retain title and control of the Equipment until they are delivered and the City has accepted delivery. All risk of transportation and all related charges shall be the responsibility of the Vendor. All claims for visible or concealed damage shall be filed by the Vendor. The City will notify the Vendor promptly of any damages to the Equipment and shall assist the Vendor in arranging for inspection. The City reserves the right to cancel and reject the Equipment upon default by Vendor in time, rate, or manner of delivery.

6. Packing. No extra charges shall be made for packaging or packing material unless authority is expressly incorporated in this Agreement. Vendor shall be responsible for safe packing which must conform to the requirement of carrier’s tariffs. All shipments must carry the correct quantity, product identification, purchase order number, receiving address and product department plainly marked on all packages.

7. Performance Warranty. The standard manufacturer's warranty will apply to the Equipment purchased under this Agreement.

8. Price Warranty. Vendor shall give the City the benefit of any price reductions prior to the actual time of shipment. However, if the City authorizes shipment prior to the specified shipment date, the City shall have the advantage of any price reduction prior to the specified shipment date.

9. Inspection; Acceptance. The Equipment is subject to final inspection and acceptance by the City. The Equipment failing to conform to the provisions of this Agreement will be held at Vendor's risk and may be returned to the Vendor. If so returned, all return costs are the responsibility of the Vendor. Upon discovery of a non-conforming material, the City may elect to do any of the following by written notice to the Vendor: (i) waive the non-conformity; (ii) bring material into compliance and withhold the cost of same from any payments due to the Vendor; or (iii) return the Equipment to the Vendor as set forth herein.

10. No Replacement of Defective Tender. Tender of the Equipment shall fully comply with all provisions of the Agreement. If a tender is made which does not fully conform, this may constitute a breach of the Agreement.

11. Right to Assurance. Whenever one party to this Agreement in good faith has reason to question the other party's intent to perform it may demand that the other party give a written assurance of its intent to perform. In the event that a demand is made and no written assurance is given within five days, the demanding party may treat this failure as an anticipatory repudiation of the Agreement.

12. Indemnification. To the fullest extent permitted by law, the Vendor shall indemnify, defend and hold harmless the City and each council member, officer, employee or agent thereof (the City and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions of the Vendor, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

13. Termination; Cancellation.

13.1 For City's Convenience. This Agreement is for the convenience of the City and, as such, may be terminated without cause after receipt by Vendor of written notice by the City.

13.2 For Cause. This Agreement may be terminated by either party upon 30 days' written notice should the other party fail to substantially perform in accordance with this Agreement's terms, through no fault of the party initiating the termination.

13.3 Conflict of Interest. This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511. The City may cancel this Agreement without penalty or further obligations by the City or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City or any of its departments or agencies is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a consultant to any other party of the Agreement with respect to the subject matter of the Agreement.

13.4 Gratuities. The City may, by written notice to the Vendor, cancel this Agreement if it is found by the City that gratuities, in the form of economic opportunity, future employment, entertainment, gifts or otherwise, were offered or given by the Vendor or any agent or representative of the Vendor to any officer, agent or employee of the City for the purpose of securing this Agreement. In the event this Agreement is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Vendor an amount equal to 150% of the gratuity.

13.5 Agreement Subject to Appropriation. This Agreement is subject to the provisions of ARIZ. CONST. ART. IX, § 5 and ARIZ. REV. STAT. § 42-17106. The provisions of this Agreement for payment of funds by the City shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. The City shall be the sole judge and authority in determining the availability of funds under this Agreement and the City shall keep the Vendor fully informed as to the availability of funds for this Agreement. The obligation of the City to make any payment pursuant to this Agreement is a current expense of the City, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the City. If the City Council fails to appropriate money sufficient to pay the amounts as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of then-current fiscal year and the City and the Vendor shall be relieved of any subsequent obligation under this Agreement.

14. Miscellaneous.

14.1 Independent Contractor. The Vendor acknowledges and agrees that the Equipment provided under this Agreement is being provided as an independent contractor, not as an employee or agent of the City. Vendor, its employees and subcontractors are not entitled to workers' compensation benefits from the City. The City does not have the authority to supervise or control the actual work of Vendor, its employees or subcontractors. Vendor is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. City and Vendor do not intend to nor will they combine business operations under this Agreement.

14.2 Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in Maricopa County, Arizona.

14.3 Laws and Regulations. Vendor shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Vendor is responsible abides by, and remains in compliance with, all rules, regulations, ordinances, statutes or laws affecting the Equipment, including, but not limited to, the following: (A) existing and future City and County ordinances and regulations, (B) existing and future State and Federal laws and (C) existing and future Occupational Safety and Health Administration standards.

14.4 Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the City and the Vendor.

14.5 Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Agreement will promptly be physically amended to make such insertion or correction.

14.6 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of the Agreement which may remain in effect without the invalid provision or application.

14.7 Relationship of the Parties. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Vendor is advised that taxes or Social Security payments will not be withheld from any City payments issued hereunder and Vendor agrees to be fully and solely responsible for the payment of such taxes or any other tax applicable to this Agreement.

14.8 Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting the Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

14.9 Assignment. No right or interest in this Agreement shall be assigned by Vendor without prior, written permission of the City signed by the City Manager. Any attempted assignment by Vendor in violation of this provision shall be a breach of this Agreement by Vendor.

14.10 Subcontracts. No subcontract shall be entered into by the Vendor with any other party to furnish the Equipment without the prior written approval of the City. The Vendor is responsible for performance under this Agreement whether or not subcontractors are used.

14.11 Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the City of any existing or future right and remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the City to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the City's acceptance of and payment for goods, shall not release the Vendor from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of this Agreement.

14.12 Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

14.13 Liens. The Equipment shall be free of all liens and, if the City requests, a formal release of all liens shall be delivered to the City.

14.14 Offset.

A. Offset for Damages. In addition to all other remedies at law or equity, the City may offset from any money due to the Vendor any amounts Vendor owes to the City for damages resulting from breach of any obligation under this Agreement.

B. Offset for Delinquent Fees or Taxes. The City may offset from any money due to the Vendor any amounts Vendor owes to the City for delinquent fees, transaction privilege taxes and property taxes, including any interest or penalties.

14.15 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, (C) given to a recognized and reputable overnight delivery service, to the address set forth below or (D) delivered by facsimile transmission to the number set forth below:

If to the City: City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323
Facsimile: (623) 333-0100
Attn: Charles P. McClendon, City Manager

With copy to: GUST ROSENFELD, P.L.C.
One East Washington Street, Suite 1600
Phoenix, Arizona 85004-2553
Facsimile: (602) 254-4878
Attn: Andrew J. McGuire, Esq.

If to Vendor: HACH Company
5600 Lindbergh Drive
Loveland, CO 80538
Facsimile: (970) 461-391
Attn: Staci Lamfers

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage, (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day, or (D) when received by facsimile transmission during the normal business hours of the recipient. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

14.16 E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Vendor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Vendor's or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

14.17 Scrutinized Business Operations. Pursuant to ARIZ. REV. STAT. §§ 35-391.06 and 35-393.06, the Vendor certifies that it does not have scrutinized business operations in Sudan or Iran. For the purpose of this subsection the term "scrutinized business operations" shall have the meanings set forth in ARIZ. REV. STAT. §§ 35-391 or 35-393, as applicable. If the City determines that the Vendor submitted a false certification, the City may impose remedies as provided by law including terminating this Agreement pursuant to subsection 13.2 above.

14.18 Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, any City-approved Equipment Orders and invoices, the documents shall govern in the order listed herein. Notwithstanding the foregoing,

and in conformity with Section 2 above, unauthorized exceptions, conditions, limitations or provisions in conflict with the terms of this Agreement or the State Contract (collectively, the “Unauthorized Conditions”), other than the City’s project-specific requirements, are expressly declared void and shall be of no force and effect. Acceptance by the City of any Equipment Order or invoice containing any such Unauthorized Conditions or failure to demand full compliance with the terms and conditions set forth in this Agreement shall not alter or relieve Vendor from, nor be construed or deemed a waiver of, its requirements and obligations in the performance of this Agreement.

14.19 Non-Exclusive Contract. This Agreement is entered into with the understanding and agreement that it is for the sole convenience of the City. The City reserves the right to obtain like goods and services from another source when necessary.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

“City”

CITY OF AVONDALE, an Arizona
municipal corporation

Charles P. McClendon, City Manager

ATTEST:

Carmen Martinez, City Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on _____, 2012,
by Charles P. McClendon, the City Manager of the CITY OF AVONDALE, an Arizona
municipal corporation, on behalf of the City of Avondale.

Notary Public in and for the State of Arizona

(affix notary seal here)

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

EXHIBIT A
TO
PURCHASE AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
HACH COMPANY

[Equipment Lists]

See following pages.

HACH COMPANY

PO Box 389 • Loveland, Colorado 80539-0389

Phone 800-227-4224 or 970-669-3050

Fax 970-669-2932

<http://www.hach.com>



Be Right™

**City of Avondale
Attn: Jane Parker
399 E Lower Buckeye Rd
Avondale, AZ 85323**

December 7, 2011

Dear Jane,

This letter is to confirm that Hach Company is the sole manufacturer and distributor within the United States of the following equipment:

Potassium Iodide Refill for Swiftest, 50 grams, DPD Total Chlorine, 25ml powder pillows, 100-Pack, Acetate Buffer Solution pH 4.0 (total and/or Free Chlorine, Amperometric Method) 100 mL, Amver Test N Tube Reagent Set, Low-Range Ammonia, 0-2.5mg/L, 50-Pack, Amver Test N Tube Reagent Set, High-Range Ammonia, 0-50 mg/L, 50-Pack, NitraVer Test N Tube Reagent Set, Nitrate-Nitrogen, 0-30 mg/L, 50 Pack, NitraVer Test N Tube Reagent Set, Nitrite-Nitrogen, 0-0.5000 mg/L, 50-Pack, Solution to store pH electrodes, 500mL, PAO Standard, 0.00564N, 1000 mL, Sulfuric acid 19.2n, 100mL, 2100AN Laboratory Turbidimeter, AutoCAT 9000 Titrator, DR 2800 Spectrophotometer, DR 890 Colorimeter, HQ30d Multi-Parameter Meter, LDO Sensor Cap Replacement HQd Series, KTO: Shroud Kit, Std Probe, HQd Series, sensION Bench Top pH Meter, IntelliCAL LDO Probe-Standard (3 m cable), IntelliCAL LDO Probe-Rugged (5 m cable), IntelliCAL pH Probe-Standard (3 m cable), IntelliCAL ORP Probe- Standard and Refillable (3 m cable), IntelliCAL Conductivity Probe - Standard (3 m cable), pH 4.01 Color-Coded Red (NIST), 4L, pH 7.00 Color-Coded Yellow (NIST), 4L, pH 10.01 Color-Coded Blue (NIST), 4L, 3-Pack 4L, pH Buffer Solution (4.01, 7.00, 10.01), Flask, Filtering, Glass, 1000 mL, TenSette Single Channel Pipet 0.1-1.0 mL, TenSette Single Channel Pipet 1.0-10 mL, COD Reactor 15 vials x 16mm (Single Block) 115 Vac, COD Digestion Vials 16mm, Low Range 3-150 mg/L, 150-Pack, COD Digestion Vials 16mm, High Range 20-1500 mg/L, 150-Pack, LDO Probe, LDO Probe Pole Mounting Kit, sc1000 Multi-parameter Universal Controller Display Module with Modbus TCP/IP and GSM/GPRS protocols (for use in USA), Reagent Set, Total Chlorine, Sodium Hydroxide Solution 4.5N, 1000ml, Sodium Hydroxide Solution 100N, 1000ml, Chloride Removal Cartridge Assembly 25-Pack, Hydroxylamine Hydrochloride Solution 100 g/L, Ethylene Glycol, 1000MI, Ferric Ion Solution, 100mL, Nitrate Nitrogen Standard Solution 100mg/L, 500mL, COD Standard Solution, 300mg/L, 200mL, Sulfuric acid 0.020N, 1000mL, Ferric Chloride-Sulfuric Acid Solution for Volatile Acids, 1000mL, Sulfuric Acid Solution 19.2N, 100mL, Standard Hydrochloric Acid, 0, 10N, 1000 mL, Sulfuric Acid Solution 19.2N, 500mL, Iodine

Standard Solution 0, 0282N, 1000mL, Sodium Thiosulfate Standard Solution Stabilized, 0,00564N, 1000mL, Actetate Buffer Solution, pH4, 100mL, Pipet Tips 1.0-10.0mL, non-sterile, 250-Pack, Pipet Tips 0.1-1.0mL, non-sterile, 1000-Pack, Distillation Heater and Support Apparatus, LDO Probe Replacement Sensor Cap, StablCal Set for 2100AN/AN IS, Gelex Secondary Standard Set for 2100AN/AN IS, Lamp Replacement Kit for 2100AN Turbidity Meter, 1720ETurbidity analyzer, SC200 Universal Controller 2 Digital, and pH probe.

Associated catalog numbers are: 107760, 1406499, 1490932, 2604545, 2606945, 2605345, 2608345, 2756549, 199953, 203832, 4700100, 5008100, DR2800-01B1, 4847000, HQ30d53000000, 5811200, 5832500, 5175013, LDO010103, LDO10105, pHC28103, MTC10103, CDC40103, 2283456, 2283556, 2283656, 2507200, 54653, 1970001, 1970010, LTV082.53.40001, 2125815, 2125915, 5790000, 5794400, LXV402.99.11002, 2557000, 204053, 19153, 2661825, 81842, 203953, 2212242, 194749, 1218629, 20353, 204253, 203832, 1481253, 203849, 2333353, 2408853, 1490932, 2199725, 2185628, 2274400, 5791100, 2659505, 2589200, 4708900, 6010101, LXV404.99.00552 and DPD1P1.

Please note that the items highlighted in yellow on the attached spreadsheet are not sole source items. Those are not included in this letter.

Thank you for your interest in Hach Company products. If we can help in any way, please call us at 1-800-227-4224.

Sincerely,

Carol Burrill

Carol Burrill
Field Sales Support Specialist

Facility location: 5600 Lindbergh Drive • Loveland, Colorado USA 80537-8998



polymetron



Item #	Description
107760	Potassium Iodide Refill for Swiftest, 50 grams
1406499	DPD Total Chlorine, 25ml powder pillows, 100-Pack
1490932	Acetate Buffer Solution pH 4.0 (total and/or Free Chlorine, Amperometric Method) 100 mL
2604545	Amver Test N Tube Reagent Set, Low-Range Ammonia, 0-2.5mg/L, 50-Pack
2606945	Amver Test N Tube Reagent Set, High-Range Ammonia, 0-50 mg/L, 50-Pack
2605345	NitraVer Test N Tube Reagent Set, Nitrate-Nitrogen, 0-30 mg/L, 50 Pack
2608345	NitraVer Test N Tube Reagent Set, Nitrite-Nitrogen, 0-0.5000 mg/L, 50-Pack
2756549	Solution to store pH electrodes, 500mL
199953	PAO Standard, 0.00564N, 1000 mL
203832	Sulfuric acid 19.2n, 100mL
4700100	2100AN Laboratory Turbidimeter
5008100	AutoCAT 9000 Titrator
DR2800-01B1	DR 2800 Spectrophotometer
4847000	DR 890 Colorimeter
HQ30d53000000	HQ30d Multi-Parameter Meter
5811200	LDO Sensor Cap Replacement HQd Series

5832500	KTO: Shroud Kit, Std Probe, HQd Series
5175013	sensION Bench Top pH Meter
LDO010103	IntelliCAL LDO Probe-Standard (3 m cable)
LDO10105	IntelliCAL LDO Probe-Rugged (5 m cable)
pHC28103	IntelliCAL pH Probe-Standard (3 m cable)
MTC10103	IntelliCAL ORP Probe- Standard and Refillable (3 m cable)
CDC40103	IntelliCAL Conductivity Probe - Standard (3 m cable)
2283456	pH 4.01 Color-Coded Red (NIST), 4L
2283556	pH 7.00 Color-Coded Yellow (NIST), 4L
2283656	pH 10.01 Color-Coded Blue (NIST), 4L
2507200	3-Pack 4L, pH Buffer Solution (4.01, 7.00, 10.01)
2928402	Cylinder, Graduated, Glass Double Metric, Low Form, 100 mL
2511211	Glass Microfibre Filters, 110mm, 100-Pack
54653	Flask, Filtering, Glass, 1000 mL
1352900	Filter Holder, Magnetic, 47 mm
2511207	Glass Microfibre Filters, 47mm, 100-Pack
2090553	Funnel, Buchner, Polypropylene 76mm

2090553	Funnel, Buchner, Polypropylene
1429600	Muffle Furnace
1428900	Oven, Laboratory 120 Vac, 60Hz
1970001	TenSette Single Channel Pipet 0.1-1.0 mL
1970010	TenSette Single Channel Pipet 1.0-10 mL
LTV082.53.40001	COD Reactor 15 vials x 16mm (Single Block) 115 Vac
2125815	COD Digestion Vials 16mm, Low Range 3-150 mg/L, 150-Pack
2125915	COD Digestion Vials 16mm, High Range 20-1500 mg/L, 150-Pack
1864100	Rack, COD and Test Tube
2590402	Gloves, Disposable, Powder Free, Latex, Medium
2590403	Gloves, Disposable, Powder Free, Latex, large
2550502	Gloves, Disposable, Powder Free, Nitrile, medium
2550504	Gloves, Disposable, Powder Free, Nitrile, extra large
2936701	Balance, Analytical
2898600	Autoclave, Steam- OBSOLETE ITEM NO REPLACEMENT
2348000	Timer, 3-Channel
1523200	Magnetic Stir Bar Retriever

5790000	LDO Probe
5794400	LDO Probe Pole Mounting Kit
LXV402.99.11002	sc1000 Multi-parameter Universal CoOntroller Display Module with Modbus TCP/IP and GSM/GPRS protocols (for use in USA)

2676500	Centrifuge
2928402	Cylinder, Graduated, Glass Double Metric, Low Form, 100mL
2928301	Cylinder, Graduated, Glass Double Metric, Tall Form, 50mL
2928302	Cylinder, Graduated, Glass Double Metric, Tall Form, 100mL
217241	Cylinder, Graduated, Polypropylene 50 mL
217242	Cylinder, Graduated, Polypropylene 100 mL
217253	Cylinder, Graduated, Polypropylene 1000 mL
2088701	Dessicant with Indicator
2551910	Dish, Moisture Determinatin
2164000	Dish, Disposable
2265300	Distillation Apparatus
54679	Flask, Filtering, Glass, 500 mL
2264649	Flask, Distillation
50041H	Beaker, Glass, 50 mL

50042H	Beaker, Glass, 100 mL
50046H	Beaker, Glass, 250 mL
50048	Beaker, Glass, 400 mL
50052	Beaker, Glass, 600 mL
50053	Beaker, Glass, 1000 mL
2087079	Bottle, Sample, Round, LDPE 500mL
2087083	Bottle, Sample, Round, LDPE 1000mL
62016	Bottle, Wash, Wide-Mouth, 1000 mL
62075	Bottle, Wash, Wide-Mouth, 750 mL
62011	Bottle, Wash, Wide-Mouth, 500 mL
2557000	Reagent Set, Total Chlorine
2040-53	Sodium Hydroxide Solution 4,5N, 1000ml
191-53	Sodium Hydroxide Solution 100N, 1000ml
26618-25	Chloride Removal Cartridge Assembly 25-Pack
81842	Hydroxylamine Hydrochloride Solution 100 g/L
2275806	Tube, Culture 16x100mm, 6-Pack
203953	Ethylene Glycol, 1000mL

2212242	Ferric Ion Solution, 100mL
194749	Nitrate Nitrogen Standard Solution 100mg/L, 500mL
1218629	COD Standard Solution, 300mg/L, 200mL
20353	Sulfuric acid 0.020N, 1000mL
204253	Ferric Chloride-Sulfuric Acid Solution for Volatile Acids, 1000mL
203832	Sulfuric Acid Solution 19.2N, 100mL
14812-53	Standard Hydrochloric Acid, 0, 10N, 1000 mL
203849	Sulfuric Acid Solution 19.2N, 500mL
2333353	Iodine Standard Solution 0, 0282N, 1000mL
2408853	Sodium Thiosulfate Standard Solution Stabilized, 0,00564N, 1000mL
1490932	Acetate Buffer Solution, pH4, 100mL
2199725	Pipet Tips 1.0-10.0mL, non-sterile, 250-Pack
2185628	Pipet Tips 0.1-1.0mL, non-sterile, 1000-Pack
2274400	Distillation Heater and Support Apparatus
2264900	J-Tube, 20-400
2265000	Condensor, 20-400
2265100	Drip Tube, 20-400

2273700 Heater, Stirrer

5791100 LDO Probe Replacement Sensor Cap

2936701 Balance, Analytical, 80g capacity

2937201 Balance, Laboratory 600g capacity

2084900 1" Round Glass, 30mL, w/cap

2434706 1" Round Glass, 10mL, w/cap

2659505 StablCal Set for 2100AN/AN IS

2589200 Gelex Secondary Standard Set for 2100AN/AN IS

126936 Silicone Oil

4708900 Lamp Replacement Kit for 2100AN Turbidity Meter

Model SC-100 Chlorine analyzer SC100 is obsolete

Model 1720E 6010101 Turbidity analyzer

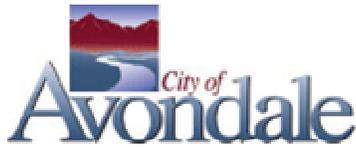
Model SC-200 LXV404.99.00552 Chlorine analyzer This is really a universal controller

SC-200 DPD1P1 PH analyzer Model

EXHIBIT B
TO
PURCHASE AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
HACH COMPANY

[Equipment Orders]

See following pages (to be attached subsequent to execution).



CITY COUNCIL REPORT

SUBJECT:

Resolution 3030-212 – Intergovernmental Agreement with ADOT for 99th Avenue/ McDowell Road Fiber Optic Project

MEETING DATE:

February 21, 2012

TO: Mayor and Council

FROM: Sue McDermott, P.E., Development Services Director/City Engineer, 623-333-4211

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council adopt a resolution authorizing an Intergovernmental Agreement (IGA) between the City of Avondale and the Arizona Department of Transportation (ADOT) for the administration of the design and construction of the 99th Avenue/McDowell Road Fiber Optic project, and authorize the Mayor, or City Manager and City Clerk to execute the necessary documents.

BACKGROUND:

The City of Avondale applied for Federal Congestion Mitigation and Air Quality (CMAQ) funding through the Maricopa Association of Governments (MAG) for the Intelligent Transportation System (ITS) project. This project is included in the FY 2009-2013 MAG Transportation Improvement Program and was programmed for FY 2013. However; the City applied for and received FY 2012 CMAQ closeout funds which has allowed for the design of the project to begin in FY 2012.

DISCUSSION:

The ITS project will furnish and install 2-1/8 miles of fiber optic conduit cable, CCTV cameras and associated equipment along McDowell Road from 99th Avenue to Avondale Boulevard and about 1/8 mile north of 99th Avenue and McDowell Road.

Upon project completion, traffic flow along the McDowell Road corridor will be facilitated via fiber optic communications and established through the Traffic Operations Center (TOC). Traffic Operations staff will be able to efficiently diagnose and troubleshoot traffic signal issues and implement traffic signal timing for incidents affecting traffic flow on McDowell Road from 99th Avenue to Avondale Boulevard from the TOC.

The purpose of the IGA is to identify and define the State's and the City's respective responsibilities for the Project. The IGA proposes the following terms of agreement:

ADOT will be responsible for the administration of the design and construction of this project.

The City will be responsible for remittance of a \$10,000 design review fee to ADOT, their share of the design cost currently estimated at \$280,000 and any difference between the estimated and actual design review costs. The \$280,000 will be reimbursed to the City in FY 2013.

The City will also be responsible for their share of construction costs currently estimated at \$433,626, and any difference between the estimated and actual construction costs.

BUDGETARY IMPACT:

Funding for this project is available in CIP Street Fund Line Item 304-1267-00-8420, Intelligent Transportation System (ITS).

RECOMMENDATION:

Staff recommends that the City Council adopt a resolution authorizing an Intergovernmental Agreement (IGA) between the City of Avondale and the Arizona Department of Transportation (ADOT) for the administration of the design and construction of the 99th Avenue/McDowell Road Fiber Optic project subject to minor revisions by the City Attorney, and authorize the Mayor, or City Manager and City Clerk to execute the necessary documents.

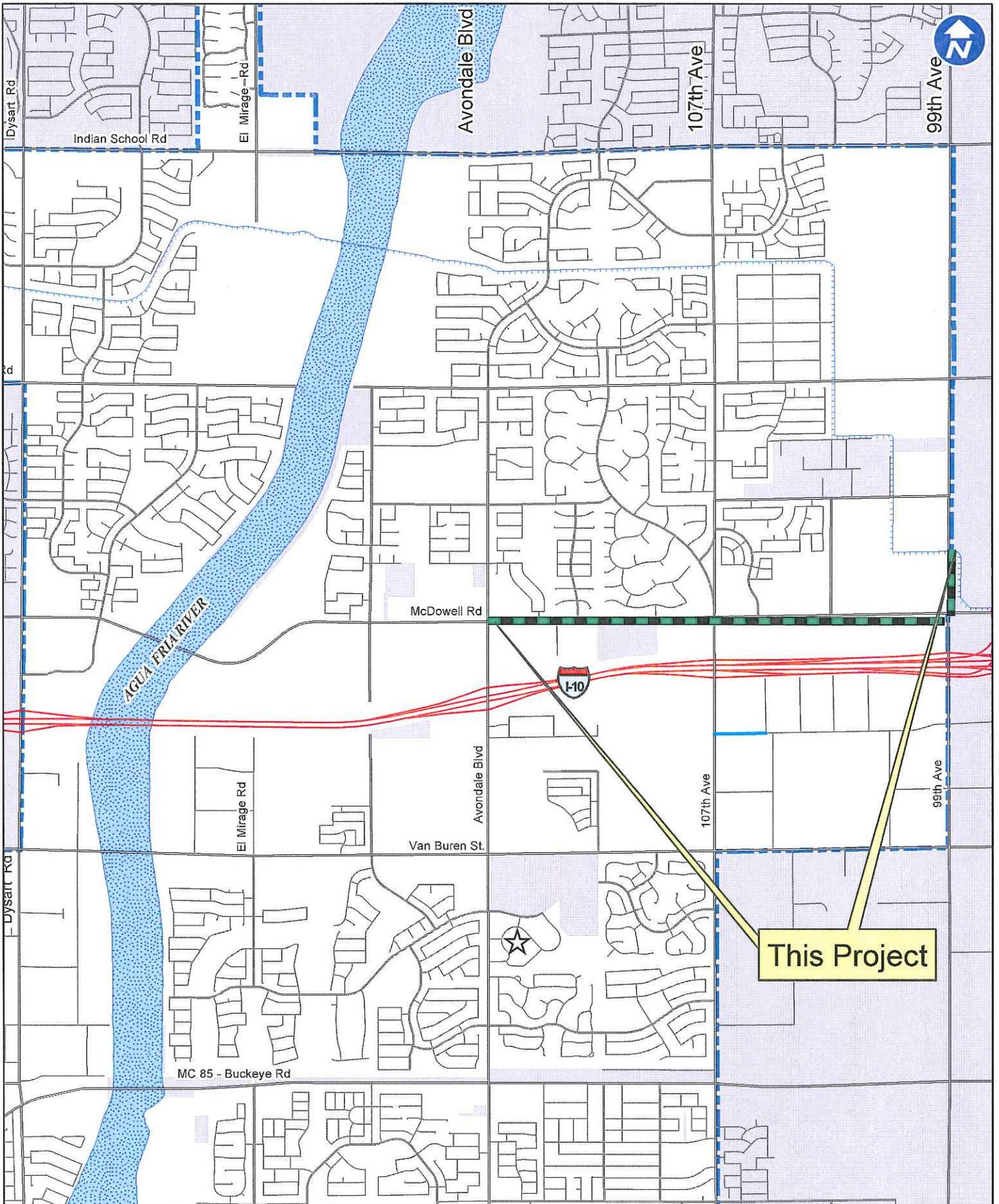
ATTACHMENTS:

Click to download

 [Vicinity Map](#)

 [Resolution 3030-212 - Intergovernmental Agreement with ADOT](#)

VICINITY MAP



City of Avondale
McDowell Rd/99th Avenue 2-1/8 Mile ITS Infrastructure Project

RESOLUTION NO. 3030-212

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING THE INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA RELATING TO THE 99TH AVENUE AND MCDOWELL ROAD FIBER OPTIC INFRASTRUCTURE.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. The Intergovernmental Agreement with the State of Arizona for the administration of the design and construction of the 99th Avenue and McDowell Road Fiber Optic Project (the “Agreement”) is hereby approved substantially in the form attached hereto as Exhibit A and incorporated herein by reference.

SECTION 2. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to cause the execution of the Agreement and to take all steps necessary to carry out the purpose and intent of this Resolution.

PASSED AND ADOPTED by the Council of the City of Avondale, February 21, 2012.

Marie Lopez Rogers, Mayor

ATTEST:

Carmen Martinez, City Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 3030-212

[Agreement]

See following pages.

ADOT File No.: IGA/JPA 11-181I
AG Contract No.: P001 2011 000xxx
Project: Fiber Optic
Section: McDowell Rd, 99th Ave to
Avondale Blvd, and 99th Ave McDowell
Rd to 1/8 miles north
Federal Project No.: CM-AVN-0(210)a
ADOT Project No.: SZ00201C
TIP/STIP No.: CMAQ
Budget Source Item No.: n/a

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF AVONDALE

THIS AGREEMENT is entered into this date _____, 2012 pursuant to the Arizona Revised Statutes § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State" or "ADOT") and the CITY OF AVONDALE, acting by and through its MAYOR and CITY COUNCIL (the "City"). The State and the City are collectively referred to as "Parties."

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
3. The work proposed under this Agreement consists of will consist of 2 1/8 miles of Fiber Optic Conduit Cable, CCTV Cameras along McDowell Road from 99th Avenue to Avondale Boulevard and about 1/8 mile North of 99th Avenue and McDowell, hereinafter referred to as the "Project". The City will administer the design and the State will advertise, bid and award, and oversee the construction of the Project.
4. The Project lies within the boundary of the City and has been selected by the City and the survey of the project site has been completed. The plans, estimates and specifications for the Project will be prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for its approval.
5. The City, in order to obtain federal funds for the design and/or construction of the Project, is willing to provide City funds to match federal funds in the ratio required or as finally fixed and determined by the City and FHWA, including actual construction engineering and administration costs (CE).
6. The interest of the State in this Project is the acquisition of federal funds for the use and benefit of the City and to authorize such federal funds for the Project pursuant to Federal law and regulations. The State shall be the designated agent for the City.
7. The Parties shall perform their responsibilities consistent with this Agreement and any change or modification to the Project will only occur with the mutual written consent of both Parties.

8. The federal funds will be used for the scoping/design and construction of the Project, including the construction engineering and administration cost (CE). The estimated Project costs are as follows:

SZ002 03D (scoping/design):

Federal-aid funds CMAQ @ 100% (capped) FY2013	\$ 280,000.00
City's match @ 0%	\$
City's contribution @ 100%	\$
Design review fee (SZ002 01D)*	<u>\$ 10,000.00</u>

Subtotal – Scoping/Design (ADOT (on-Call)-State administrators) \$ 290,000.00

SZ002 01C (construction):

Federal-aid funds CMAQ @ 100% (capped) FY2013	\$ 473,467.00
City's match @ 0%	\$
City's contribution @ 100%	<u>\$ 433,626.00</u>

Subtotal – Construction (State administered)** \$ 907,093.00

TOTAL Project Cost \$ 1,197,093.00

Summary:

Total Estimated City Funds	\$ 443,626.00
Total Federal Funds	\$ 753,467.00

* (Included in the City Estimated Funds)

** (Includes 15% CE and 5% Project contingencies)

The Parties acknowledge that the final bid amount may exceed the initial estimate(s) shown above, and in such case, the City is responsible for, and agrees to pay, any and all eventual, actual costs exceeding the initial estimate. If the final bid amount is less than the initial estimate, the difference between the final bid amount and the initial estimate will be de-obligated or otherwise released from the Project. The City acknowledges it remains responsible for, and agrees to pay according to the terms of this Agreement, any and all eventual, actual costs exceeding the final bid amount.

THEREFORE, in consideration of the mutual Agreements expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State will:

a. Upon execution of this Agreement, and prior to performing or authorizing any work, invoice the City for the State's design review fee, currently estimated at **\$10,000.00** and the City's estimated share of the Project, currently estimated at **\$280,000.00 advanced to be reimbursed in 2013**. Once the Project costs have been finalized and upon prior notification to the City of any overages, the State will either invoice or reimburse the City for the difference between estimated and actual costs.

b. Upon receipt of the design review fee and the City's estimated share of the Project costs, currently estimated at **\$290,000.00**, on behalf and with consent of the City, make available one of the State's on-call design consultants ("Consultant") to prepare all pertaining documents for the design and post-design of the project; review and approve documents required by FHWA to qualify certain projects

for and to receive federal funds, providing comments to the City as appropriate. Such documents may consist of, but are not specifically limited to, environmental documents; the preparation of the analysis requirements for documentation of environmental categorical exclusion determinations; review of reports, design plans, maps, and specifications; geologic materials testing and analysis; right-of-way related activities and such other related tasks essential to the achievement of the objectives of this Agreement.

c. Submit all documentation required to FHWA containing the above-mentioned Project with the recommendation that funding be approved for scoping/design. Request the maximum programmed federal funds for the scoping/design of this Project. The Project will be performed, completed, accepted and paid for in accordance with the requirements of Project plans and specifications.

d. Upon notification by the City and the Consultant of the completion of design and prior to bid advertisement, invoice the City, for the City's share of funds for the construction costs of the Project currently estimated at **\$433,626.00**. Once the Project costs have been finalized and upon prior notification to the City of any overages, the State will either invoice or reimburse the City for the difference between estimated and actual costs. Deobligate or otherwise release any remaining federal funds from the scoping/design phase of the Project. The State will prepare a final reconciliation upon completion of the Project.

e. Upon receipt of the local share and any contribution toward construction, submit all documentation required to FHWA with the recommendation that funding be approved for construction. Request the maximum programmed federal funds for the construction of this Project.

f. Upon authorization by FHWA and with the aid and consent of the City and the FHWA, the State shall proceed to advertise for, receive and open bids subject to the concurrence of the FHWA and the City, to whom the award is made for and enter into a contract(s) with a firms(s) for the construction of the Project.

g. Provide a set of as-built plans upon completion of the construction phase of the Project. An electronic version of the as-built plans shall be forwarded to Arizona Department of Transportation Local Government Section.

h. Notify the City the Project has been completed and is considered acceptable, coordinating with the City as appropriate and to turn over full responsibility of the Project improvements to the City. De-obligate or otherwise release any remaining federal funds from the construction phase of the Project within 90 days of final acceptance.

i. Not be obligated to maintain said Project, should the City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

2. The City will:

a. Upon execution of this Agreement, designate the State as authorized agent for the City.

b. Upon execution of this Agreement, prior to performing or authorizing any work, and within thirty (30) days of receipt of an invoice from the State, remit to the State the State's design review fee, currently estimated at **\$10,000.00** and the City's estimated share of the Project, currently estimated at **\$280,000.00 advanced to be reimbursed in 2013**. Upon prior notification from the State of any overages, be responsible for any difference between the estimated and actual design review costs.

c. Allow the State to enter into an agreement with the selected Consultant to provide services as required and requested throughout the design and post-design of the project. Review the design plans, specifications and other such documents and services required for the construction bidding and construction of the Project, including scoping/design plans and documents required by FHWA to qualify projects for and to receive federal funds. Provide design review comments to the State as appropriate.

d. Enter into an agreement with the State for the use of one of the Consultants to provide services as required and requested throughout the development of the Project including the construction phase of the Project.

e. Be entirely responsible for all costs incurred in performing and accomplishing the work as set forth under this Agreement, not covered by federal funding, including the State's design review fee separately billed by the State and included in the Cost Estimate. Should costs be deemed ineligible or exceed the maximum federal funds available, it is understood and agreed that the City is responsible for these costs.

f. Certify that all necessary rights-of-way have been or will be acquired prior to advertisement for bid and also certify that all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the Project area, shall be removed from the proposed right-of-way, or will be removed prior to the start of construction. Coordinate with the appropriate State's Right-of-Way personnel during any right-of-way process performed by the City, if applicable.

g. Hereby grant the State, its agents and/or contractors, without cost, the right to enter City Rights-of-Way, as required, to conduct any and all construction and preconstruction related activities, including without limitation, temporary construction easements or temporary Rights-of-Entry to accomplish among other things, soil and foundation investigations.

h. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent of scope of the work requested by the City. Such changes require the prior approval of the State and FHWA. Be responsible for any contractor claims for additional compensation caused by Project delays attributable to the City. Payment for these costs shall be made within thirty (30) days of receipt of an invoice from the State.

i. Upon completion of the Project, assume responsibility for maintenance of the Project, at its own expense and as an annual item in its budget. Provide perpetual and proper maintenance of the Project..

j. Upon completion of construction, be responsible for the electrical power and water necessary to maintain of the Project..

k. Pursuant to 23 USC 102(b), repay all federal funds reimbursements for preliminary engineering costs on the Project if it does not advance to right of way acquisition or construction within ten (10) years after federal funds were first made available.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of said Project and related deposits or reimbursement, except any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be cancelled at any time prior to the award of the Project construction contract, upon thirty (30) days written notice to the other party. It is understood and agreed that, in the event the City terminates this Agreement, the State shall in no way be obligated to maintain said Project. If the federal funding related to this Project is terminated or reduced by the federal government, or if Congress rescinds, fails to renew, or otherwise reduces apportionments or obligation authority, the State shall in no way be obligated for funding or liable for any past, current or future expenses under this agreement.

2. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction Project. The City, in regard to the City's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid on behalf of the City and the fulfillment of any other responsibilities of the State as specifically set forth herein; that

any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless, defend and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all costs and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or non performance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, or its independent contractors, the City, any of its agents, officers and employees, or its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

3. The cost of construct and construction engineering work covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, the City agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of federal aid received.

4. The cost of the project under this Agreement includes applicable indirect costs approved by FHWA.

5. The City and State warrant compliance with the Federal Funding Accountability and Transparency Act of 2006 and associated 2008 Amendments (the "Act"). Additionally, in a timely manner, the City will provide information that is requested by the State to enable the State to comply with the requirements of the Act, as may be applicable.

6. This Agreement shall become effective upon signing and dating of the Determination Letter by the State's Attorney General.

7. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

8. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes § 35-214 and § 35-215 shall apply to this Agreement.

9. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 2009-09 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

10. Non-Availability of Funds: Every payment obligation of the State or the City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State or the City at the end of the period for which the funds are available. No liability shall accrue to the State or the City in the event this provision is exercised, and the State or the City shall not be obligated or liable for any future payments as a result of termination under this paragraph.

11. In the event of any controversy, which may arise out of this Agreement, the Parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

12. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 637E
Phoenix, Arizona 85007
(602) 712-7124
(602) 712-3132 Fax

City of Avondale
Attn: Sue McDermott
11465 W. Civic Center Drive
Avondale, Arizona 85323
(623) 333-4211
(623) 333-0420 Fax

13. To the extent applicable under Arizona Revised Statutes § 41-4401, each Party and its subcontractors warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under Arizona Revised Statutes Section 23-214(A). A breach of the above-mentioned warranty by any Party or its subcontractors shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the non-breaching Party. Each Party retains the legal right to randomly inspect the papers and records of the other Party's or its subcontractors' employees who work on the Project to ensure that the other Party or its subcontractors are complying with the above-mentioned warranty.

14. Pursuant to Arizona Revised Statutes § 35-391.06 and § 35-393.06, each Party certifies that it does not have a scrutinized business operation in Sudan or Iran. For the purpose of this Section the term "scrutinized business operations" shall have the meanings set forth in Arizona Revised Statutes § 35-391 and/or § 35-393, as applicable. If any Party determines that another Party submitted a false certification, that Party may impose remedies as provided by law including terminating this Agreement.

15. The Parties hereto shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.

16. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the Parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

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

CITY OF AVONDALE

STATE OF ARIZONA

Department of Transportation

By _____
MARIE LOPEZ ROGERS
Mayor

By _____
DALLAS HAMMIT, P.E.
Deputy State Engineer, Development

ATTEST:

By _____
CARMEN MARTINEZ
City Clerk

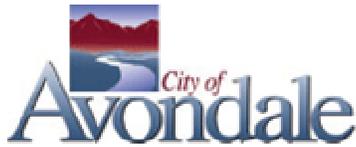
ATTORNEY APPROVAL FORM FOR THE CITY OF AVONDALE

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY OF AVONDALE, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this _____ day of _____, 2012.

City Attorney



CITY COUNCIL REPORT

SUBJECT:

Resolution 3029-212 - Intergovernmental Agreement with the City of Phoenix for Federal Transit Funding

MEETING DATE:

February 21, 2012

TO: Mayor and Council

FROM: Pier Simeri, Community Relations Director (623) 333-1611

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council adopt a Resolution approving an Intergovernmental Agreement with the City of Phoenix for Federal Transit Administration Funding (FTA) to pass through grant funding for \$1,002,118 and authorize the Mayor and City Clerk to execute this agreement.

BACKGROUND:

In 2002, the US Census Bureau designated the City of Avondale and surrounding communities, including sections of Goodyear, Litchfield Park, Glendale, Phoenix, and Maricopa County, as a separate urbanized area from the Phoenix-Mesa urbanized area. Because the Avondale Urbanized Area (UZA) population area is under 200,000, federal regulations allows the Avondale UZA to spend its federal funds on both operating and capital expenditures. Operating expenses require a 50% local match, while capital expenses require a 20% local match. The City of Phoenix is designated as the Metropolitan Planning Organization, for federal transit related operations, for Phoenix and the surrounding communities. This allows the City of Phoenix to submit a single federal grant application, which incorporates the funding request of all the eligible communities. The Avondale UZA is designated as a sub-recipient in the application.

DISCUSSION:

The Avondale Urbanized Area transit plan was approved by the City Council on November 17, 2003. Avondale staff worked with City of Phoenix representatives to incorporate the funding needs identified in the transit plan as part of the the federal grant application The City of Phoenix has submitted the grant application and will act as the administrator of the grant funding. The City of Phoenix will reimburse the City of Avondale and surrounding communities for all eligible operating and capital expenses incurred under the grant pass through agreement. The City of Avondale and surrounding communities will provide local matching funds and all necessary reports as required. The funding will be utilized to implement the operating needs identified in the Avondale Urbanized Area transit plan.

BUDGETARY IMPACT:

Based on the service and funding estimates, Avondale is required to provide the match funding in the amount of \$1,002,118, which is available in the transit fund budget 215.

RECOMMENDATION:

Staff recommends that the City Council adopt a Resolution approving an Intergovernmental Agreement with the City of Phoenix for Federal Transit Administration Funding (FTA) to pass through grant funding in the amount of \$1,002,118 in federal funds and authorize the Mayor and City Clerk to execute this agreement.

ATTACHMENTS:

Click to download

 [Resolution 3029-212](#)

RESOLUTION NO. 3029-212

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PHOENIX FOR FEDERAL TRANSIT ADMINISTRATION FUNDING.

WHEREAS, the Avondale Urbanized Area Transit Plan (the “Plan”) was approved by the Council of the City of Avondale (the “City Council”) on November 17, 2003; and

WHEREAS, the City of Phoenix (“Phoenix”) has submitted a grant application for Federal Transit Administration funding (“Grant Funds”) that incorporates the funding needs identified in the Plan; and

WHEREAS, the City of Avondale was designated as a sub-recipient of Phoenix’s application for Grant Funds; and

WHEREAS, the City Council desires to enter into an intergovernmental agreement with Phoenix for the administration of Grant Funds (the “Agreement”).

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

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

SECTION 2. The Agreement is hereby approved in substantially the form attached hereto as Exhibit A and incorporated herein by reference.

SECTION 3. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to cause the execution of the Agreement and to take all steps necessary to carry out the purpose and intent of this Resolution.

[SIGNATURES ON FOLLOWING PAGE]

PASSED AND ADOPTED by the Council of the City of Avondale, February 21, 2012.

Marie Lopez Rogers, Mayor

ATTEST:

Carmen Martinez, City Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 3029-212

[Agreement]

See following pages.

AGREEMENT NO. _____

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF PHOENIX
AND
THE CITY OF AVONDALE**

**(Grant Pass-through Agreement)
(Grant No. AZ-90-X109)**

THIS AGREEMENT is made and entered into this ____ day of _____, 20__, by and between the City of Phoenix, a municipal corporation duly organized and existing under the laws of the state of Arizona (hereinafter referred to as “PHOENIX”) and City of Avondale, a municipal corporation, duly organized and existing under the laws of the state of Arizona (hereinafter referred to as “SUB-RECIPIENT”).

RECITALS

WHEREAS, the City Manager of PHOENIX, is authorized and empowered by provisions of the City Charter to execute contracts; and,

WHEREAS, PHOENIX has Charter authority to provide transit services and Charter and statutory authority to enter into Agreements with other entities within the Phoenix Urban Area to provide transit services [A.R.S. Section 11-951, et seq.; Chapter 2, Section 2, Subsections (c) , (i) and (l), Charter of the City of Phoenix, 1969]; and,

WHEREAS, SUB-RECIPIENT has broad Charter and statutory authority to engage in all of the activities and endeavors allowed under the laws of the state of Arizona and to enter into intergovernmental agreements with other governmental entities (Article I, Section 3, Charter of the City of Avondale; A.R.S. Section 11-951, et seq.); and,

WHEREAS, the laws of the state of Arizona authorize municipalities to: (1) “engage in any business or enterprise which may be engaged in by persons by virtue of a franchise from the municipal corporation . . .” [A.R.S. Section 9-511 (A)]; (2) to “appropriate and spend public monies” on activities that “will assist in the creation or retention of jobs or will otherwise improve or enhance the economic welfare of (its) inhabitants . . .” [A.R.S. Section 9-500.11]; and, (3) to “be vested with all the powers of incorporated towns as set forth in title 9, in addition to all powers vested in them pursuant to their respective charters, or other provisions of law . . .” [A.R.S. Section 9-499.01]; and,

WHEREAS, transit activities are one of the types of activities authorized pursuant to the aforementioned statutory and Charter authority and such powers do not conflict with any of the provisions of SUB-RECIPIENT’s charter; and,

WHEREAS, Chapter 53 of 49 United States Code (formerly the Federal Transit Act of 1964, as amended), makes financial aid available to municipalities and local units of government showing a substantial effort toward the preservation, improvement and operation of mass transit systems; and,

WHEREAS, PHOENIX successfully applied to the Federal Transit Administration (FTA) for a FTA grant for the purpose of Operating Assistance and same was awarded as Grant No. AZ-90-X109; and,

WHEREAS, SUB-RECIPIENT shall receive funds from said Grant and perform the work as required therein all as set forth in Exhibit "A" hereto which Exhibit is, by this reference, incorporated herein as though fully set forth; and,

WHEREAS, PHOENIX and SUB-RECIPIENT have been authorized by their respective Councils to enter into this Agreement; NOW, THEREFORE,

AGREEMENT

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

1. Grant Reimbursement. PHOENIX agrees to reimburse SUB-RECIPIENT for the federal share of the purchase of item/services shown in the "Project Description" box on Exhibit "A." Reimbursement shall not exceed the federal funds allocated to SUB-RECIPIENT, unless approved in writing by PHOENIX. The federal funds allocated to SUB-RECIPIENT under this Agreement shall not exceed \$1,002,118. SUB-RECIPIENT shall provide the required local match for these projects. No reimbursements shall be made unless all required reports have been submitted. Projects must be completed and reimbursement must be requested within thirty (30) months of the grant award by the FTA, i.e., the FTA obligation date. The thirty (30) month duration shall be the term of the Agreement. Funding for uncompleted and unbilled projects will be reassigned at the discretion of PHOENIX, as needed to close out the grant.

A. Application for reimbursement of federal share.

SUB-RECIPIENT shall submit their application for reimbursement of federal share to:

City of Phoenix
Public Transit Department
Fiscal Services Division, Accounts Payable Section
City of Phoenix
302 N. 1st Avenue; Suite 900
Phoenix, AZ 85003

The cover letter must identify the City of Phoenix contract number and the period for which the application is submitted.

SUB-RECIPIENT shall submit its application with the reimbursement request form that is attached as **Exhibit “B”** to this Agreement.

B. Backup Documentation.

The application for reimbursement must be accompanied by detailed backup documentation for all eligible expenses. At a minimum the documentation shall include, but is not limited to, the following.

1. A listing of all invoiced costs with vendors and payment dates.
2. Copies of paid invoices received from vendors for purchases of supplies and services.
3. All purchases of vehicles shall be accompanied with “Vehicle Inventory Record” form.
4. All other asset purchases shall be accompanied with a “Capital Asset Purchase” form.

2. Exhibits and Incorporation by Reference. Attached hereto are the following Exhibits each of which is, by this reference, incorporated herein as though fully set forth.

- | | | |
|---------|---|---|
| Exhibit | A | Federal Grant Pass Through Agreement Detail Summary |
| Exhibit | B | FTA Grant Expenditure Reimbursement Request Application |
| Exhibit | C | Required Reports |
| Exhibit | D | Required Federal Provisions |
| Exhibit | E | Partial List of Applicable Laws |
| Exhibit | F | Master Grant Agreement, Table of Contents |
| Exhibit | G | Required Local Provisions |

3. Sub-recipient Performance. SUB-RECIPIENT shall complete the project for which grant funds have been awarded in a proper and timely manner. SUB-RECIPIENT further acknowledges that it is responsible for complying with all federal, state, and local requirements required under the grant. SUB-RECIPIENT agrees that failure to comply with all applicable requirements may result in the withholding of grant funds to SUB-RECIPIENT for the specific grant.

4. Notice. 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 intended for SUB-RECIPIENT:

Charles P. McClendon
City of Avondale
11465 W. Civic Center Drive
Avondale, AZ 85323
Telephone: (623) 333.1000
FAX: (623) 333.0100

If intended for PHOENIX:

Neal Young
Interim Public Transit Director
Public Transit Department
City of Phoenix
302 N. 1st. Avenue; Suite 900
Phoenix, Arizona 85003
Telephone: (602) 262.7242
FAX: (602) 495.2002

Notice shall be deemed received at the time it is personally served or, 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, FAX number, or the person to receive notice by notifying the other party as provided in this section.

Notice 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.

5. Effective Date: Upon approval of the Councils of PHOENIX and SUB-RECIPIENT, this Agreement shall become effective as of the date provided above.

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

CITY OF PHOENIX, ARIZONA
David Cavazos, City Manager

By _____
Neal Young
Interim Public Transit Director

ATTEST:

City Clerk - PHOENIX

APPROVED AS TO FORM:

Acting City Attorney - PHOENIX

APPROVED BY PHOENIX CITY COUNCIL BY FORMAL ACTION ON July 6, 2011.

CITY OF AVONDALE, ARIZONA
A Municipal Corporation

By _____
Charles P. McClendon
City Manager

ATTEST:

City Clerk - AVONDALE

APPROVED AS TO FORM:

City Attorney for AVONDALE

APPROVED BY SUB-RECIPIENT'S GOVERNING BODY BY FORMAL ACTION ON:

INTERGOVERNMENTAL AGREEMENT DETERMINATION

In accordance with the requirements of Section 11-952(D), Arizona Revised Statutes, 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 PHOENIX

Attorney for AVONDALE

801934v1

EXHIBIT "A"

FEDERAL GRANT PASS THRU AGREEMENT

GRANT NUMBER: AZ-90-X109				
GRANT RECIPIENT: CITY OF PHOENIX				
GRANT SUB- RECIPIENT'S NAME: CITY OF AVONDALE				
GRANT SUB- RECIPIENT'S ADDRESS: 11465 W. Civic Center Drive Avondale, AZ 85323				
TOTAL ELIGIBLE PROJECT COST (TEPC):		\$2,004,236		
• Federal Share of TEPC:		\$1,002,118		
• Local Share/Match of TEPC:		\$1,002,118		
PROJECT(S) DESCRIPTION:				
Ali Code:	Project(s) Description:	Local:	Federal:	Total:
30.09.01	Operating Assistance	\$1,002,118	\$1,002,118	\$2,004,236

EXHIBIT "A"

EXHIBIT "B"

FTA Grant Expenditure Reimbursement Request Application

The information provided will be used by the City of Phoenix Public Transit Department (PTD) to monitor sub-recipient expenditures for FTA-funded projects and disburse FTA funds for eligible costs. No further FTA funds may be disbursed unless this report is completed and submitted as required.

SUB-RECIPIENT ORGANIZATION NAME AND ADDRESS	GRANT AGREEMENT NUMBER	REQUEST NO.
REPORTING PERIOD (Dates)		
FROM:		TO:

	TOTAL	LOCAL MATCH	FTA SHARE
TOTAL ELIGIBLE PROJECT COSTS	\$ -	\$ -	\$ -
TOTAL PREVIOUS PAYMENTS	\$ -	\$ -	\$ -
CURRENT REIMBURSEMENT REQUESTED	\$ -	\$ -	\$ -
REMAINING FUNDING	\$ -	\$ -	\$ -

REQUIRED SIGNATURES

This document must be signed by the sub-recipient's Transit Manager and Chief Financial Officer or their designated representative(s).

CERTIFICATION

We certify the financial expenditures submitted for reimbursement with this report, including supporting documentation, are eligible and allowable expenditures, have been incurred compliant with all applicable Federal laws and regulations, have not been previously requested, and all matching requirements have been met. In addition, we understand that any discovery of a violation of a Federal law or regulation, or failure to follow any applicable Federal directives may result in withdrawal of federal participation.

SIGNATURE OF TRANSIT MANAGER OR DESIGNEE	DATE
TYPED OR PRINTED NAME AND TITLE	TELEPHONE
SIGNATURE OF CHIEF FINANCIAL OFFICER OR DESIGNEE	DATE
TYPED OR PRINTED NAME AND TITLE	TELEPHONE

Instructions

1. Keep a copy of all documents submitted.
2. All project records, including financial records, must be maintained for 3 years beyond the later of asset disposal or final close-out of the grant with FTA.

<i>For PTD use only</i>	
Date request received: -	Approved for funds availability (signature/date)

EXHIBIT “C”

Required Reports

SUB-RECIPIENT agrees to submit reports and statements or plans as now or hereafter required by PHOENIX or the FTA. Quarterly reports are due on or before the 15th of the month following the end of the quarter, i.e., October 15, January 15, April 15 and July 15; and annual reports are due ninety days (except NTD Report which shall be due 150 days) after the end of the fiscal year (July 1 - June 30). Drug and Alcohol Reports are due January 31 for the previous calendar year.

REPORT	FREQUENCY	DESCRIPTION
Grant Status Report	Quarterly	Status of each project by grant number
Single Audit Report	Annually	Copy of federally required audit
<u>For JARC or New Freedom FTA Grants</u>		
Service Profile Information	Annually or as required by FTA	Evaluation of Grant Accomplishments
Data Collection Sheet	Annually or as required by FTA	Grant Performance Information

The reports and required submissions listed above may be increased, revised, reorganized, deleted or changed as required by FTA guidelines. **All reports must be current before any FTA funds will be disbursed by PHOENIX.**

EXHIBIT "D"

Required Federal Provisions

1. SUB-RECIPIENT shall permit the authorized representatives of PHOENIX, the United States Department of Transportation, and the Controller General of the United States to inspect and audit all data, books, records and reports relating to this Agreement and SUB-RECIPIENT's performance hereunder. PHOENIX's audit shall be at SUB-RECIPIENT's sole cost and expense. All required records shall be maintained for a minimum of three years, after the grant has been formally closed.
2. 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; and, further, that no member or delegate to Congress, the City Council or any employee of PHOENIX or SUB-RECIPIENT, has any interest, financial or otherwise, in this Agreement.
3. SUB-RECIPIENT shall fully comply with the Disadvantaged Business Enterprise (DBE) Regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26 and with the FTA-approved goal submitted by PHOENIX as the recipient on behalf of the region. SUB-RECIPIENT shall abide by all stipulations, regulations, and procedures set forth in the FTA-approved City of Phoenix DBE Program Plan. The Transit Civil Rights Officer of the City of Phoenix Public Transit Department and representative(s) of the City of Phoenix Equal Opportunity Department will meet annually with SUB-RECIPIENT to cooperatively determine DBE participation for all FTA assisted projects.
4. In performing the services for which federal funding is provided under this Agreement, SUB-RECIPIENT agrees to comply with all laws, rules, regulations, standards, orders or directives (hereinafter "Laws") applicable to this Agreement, to the services provided pursuant to this Agreement, and to PHOENIX as the designated recipient of FTA funding. The Laws referred to above include federal, state and local laws, and include, but is not limited to, those items set forth in Exhibit "D."

EXHIBIT "D," page 2

5. The parties acknowledge that federal funds are being used for the work, services and/or operations provided under this Agreement. In that regard the City of Phoenix, as the designated grant recipient, is obligated to accept and comply with all of the terms and conditions set forth in the Federal Transit Administration (FTA) Master Grant Agreement. In order for SUB-RECIPIENT to receive funding under this Agreement with the City of Phoenix, SUB-RECIPIENT is required to similarly accept and comply with all such terms and conditions and SUB-RECIPIENT does hereby specifically agree to be bound thereby. A copy of the Master Grant Agreement has been provided to SUB-RECIPIENT and additional copies are available from the City of Phoenix. The Master Grant Agreement for FY2012 and any subsequent revisions are, by this reference, incorporated herein as though fully set forth. Further, a summary of some of the terms of the Master Grant Agreement, as set forth its Table of Contents, are attached hereto as Exhibit "F" and are, by this reference, incorporated herein. The items listed in Exhibit "F" are illustrative only and are set forth in the Exhibit for SUB-RECIPIENT's ease of reference; SUB-RECIPIENT is solely responsible for complying with all of the terms and conditions of the Master Grant Agreement and any subsequent revisions whether or not they are set forth in Exhibit "F".
6. SUB-RECIPIENT understands and acknowledges the applicability of the Immigration Reform and Control Act of 1986 (IRCA) and agrees to comply with the IRCA in the performance of this Agreement.
7. SUB-RECIPIENT shall fully comply with Equal Employment Opportunity (EEO) regulations of the U.S. Department of Transportation (USDOT) Urban Mass Transportation Administration (UMTA) Circular 4704.1. SUB-RECIPIENT shall provide an EEO Program Plan when they employ 50 or more transit-related employees and requests or receives capital or operating assistance under Section 3, 4(i), or 9 of the UMT Act; assistance under 23 U.S.C. 142 (a) (2) or any combination thereof, in excess of \$1 million in the previous Federal fiscal year; or requests or receives planning assistance under Section 8 and/or 9 in excess of \$250,000 in the previous Federal fiscal year. SUB-RECIPIENT shall fully comply with EEO regulations as they pertain to subcontractors. Any subcontractor with 50 or more transit-related employees shall provide an EEO Program Plan.

EXHIBIT “E”

Partial List of Applicable Laws

- A. Federal Codes. SUB-RECIPIENT shall comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to U.S.C. 2000d-4 (hereinafter referred to as the Act) and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the Regulations) and other pertinent directives, to the end that in accordance with the Act, Regulations and other pertinent directives, no person in the United States shall, on the grounds of race, color, sex or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which SUB-RECIPIENT receives federal financial assistance, directly or indirectly, from the Department of Transportation, including the Federal Transit Administration, and hereby gives assurance that it will promptly take any measures necessary to effectuate this Agreement. This assurance is required by Subsection 21.7(a)(1) of the Regulations.

More specifically and without limiting the above general assurance, SUB-RECIPIENT hereby gives the following specific assurances with respect to the project:

1. SUB-RECIPIENT shall insert the following notification in all solicitations for bids for work or material subject to the Regulations and made in connection with a project under 49 U.S.C. chapter 53 and, in adapted form in all proposals for negotiated agreements:

CONTRACTOR, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, non-discrimination in federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders and proposers that it will affirmatively ensure that in regard to any contract or procurement entered into pursuant to this advertisement, Disadvantaged Business Enterprise will be afforded full opportunity to submit bids and proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex or national origin in consideration for an award.

2. If SUB-RECIPIENT carries out a program of training under Section 5312 of Title 49, United States Code chapter 53, the assurance shall obligate SUB-RECIPIENT to make selection of the trainee or fellow without regard to race, color, sex or national origin.
3. Where SUB-RECIPIENT receives federal financial assistance to carry out a program under Title 49, United States Code chapter 53, the assurance shall obligate SUB-RECIPIENT to assign transit operators and to furnish transit operators without regard to race, color, sex or national origin.
4. Where SUB-RECIPIENT carries out a program under Title 49, United States Code chapter 53, routing, scheduling, quality of service, frequency of service, age and quality of vehicles assigned to routes, quality of stations serving different routes and location of routes may not be determined on the basis of race, color, sex or national origin.
5. This assurance obligates SUB-RECIPIENT for the period during which federal financial assistance is extended to the project.
6. SUB-RECIPIENT shall provide for such methods of administration for the program as are found by PHOENIX to give reasonable guarantee that it, its contractors, sub-contractors, transferees, successors in interest and other participants under such program will comply with all requirements imposed or pursuant to 49 U.S.C. chapter 53, the Regulations and this assurance.
7. SUB-RECIPIENT agrees that PHOENIX has a right to seek judicial enforcement with regard to any matter arising under 49 U.S.C. chapter 53, the Regulations and this assurance.

B. Compliance with FTA Regulations. During the performance of this Agreement, SUB-RECIPIENT, for itself, its assignees and successors in interest agrees as follows:

1. SUB-RECIPIENT shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (DOT), Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated herein by this reference and made a part of this contract.
2. With regard to the work performed by it during the contract, SUB-RECIPIENT shall not discriminate on the grounds of race, color, sex or

national origin in the selection and retention of sub-contractors, including procurement and leases of equipment.

3. In all solicitations, either by competitive bidding or negotiation, made by SUB-RECIPIENT for work to be performed under a sub-contract, including procurement of materials or leases of equipment, each potential sub-contractor or supplier shall be notified by SUB-RECIPIENT of the sub-contractor's obligations under this Agreement and the Regulations relative to non-discrimination on the grounds of race, color, sex or national origin.
4. SUB-RECIPIENT shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by PHOENIX or the FTA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of SUB-RECIPIENT is in the exclusive possession of another who fails or refuses to furnish this information, SUB-RECIPIENT shall so certify to PHOENIX, or the FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. In the event of SUB-RECIPIENT's noncompliance with the nondiscrimination provisions of this contract, PHOENIX shall impose such contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:
 - a) Withholding of payments to SUB-RECIPIENT under the grant award until SUB-RECIPIENT complies; and/or,
 - b) Cancellation, termination or suspension of this Agreement, in whole or in part.
6. SUB-RECIPIENT shall include the FTA provisions included in paragraphs 1 through 5 of Section B, in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. SUB-RECIPIENT shall take such action with respect to any sub-contract or procurement as PHOENIX or the FTA may direct as a means of enforcing such provisions, including sanctions for noncompliance: provided, however, that, in the event SUB-RECIPIENT becomes involved in, or is threatened with, litigation with a sub-contractor or supplier as a result of such direction, SUB-RECIPIENT may request that PHOENIX enter into such litigation to protect the interests of PHOENIX, and, in addition, SUB-RECIPIENT may request the United States to enter into such litigation to protect the interests of the United States.

7. SUB-RECIPIENT hereby adopts the Title VI investigation and tracking procedure developed by PHOENIX. SUB-RECIPIENT agrees that PHOENIX personnel shall conduct Title VI investigations. The determinations made by PHOENIX of Title VI complaints shall be binding upon SUB-RECIPIENT. SUB-RECIPIENT shall maintain a list of any active Title VI investigations conducted by any governmental entity, including PHOENIX and shall maintain a Title VI complaint log of closed investigations for three (3) years. SUB-RECIPIENT shall provide information to the public concerning its Title VI obligations and apprise the public of protections offered by Title VI.
8. SUB-RECIPIENT specifically avows that, where applicable, it is and will provide fair and equitable labor protective arrangements, as reflected in 49 U.S.C. § 5333(b), otherwise known as 13(c).
9. SUB-RECIPIENT shall comply with the following Statutes and Regulations:
 - 18 U.S.C. 1001
 - Section 5323(d) of 49 U.S.C. chapter 53
 - Section 5323(f) of 49 U.S.C. chapter 53
 - Section 5307(k) of 49 U.S.C. chapter 53
 - Section 5309(h) of 49 U.S.C. chapter 53
 - Section 5301 of 49 U.S.C. chapter 53
 - Section 5333 of 49 U.S.C. chapter 53 which requires compliance with applicable labor requirements.
 - Section 5310 of 49 U.S.C. chapter 53 which provides, among other things, for the planning and design of mass transportation facilities to meet the special needs of senior persons and persons with disabilities.

Section 5332 of 49 U.S.C. chapter 53 which, among other things, prohibits discrimination on the basis of race, color, creed, national origin, sex or age.

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d which, among other things, prohibits discrimination on the basis of race, color or national origin by recipients of federal financial assistance.

Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e which, among other things, prohibits discrimination in employment.

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 which, among other things, prohibits discrimination on the basis of disability.

49 CFR Part 600 et seq. regulations promulgated by FTA.

49 CFR Parts 21, 23, 25, 26 and 27 regulations promulgated by the Department of Transportation governing Title VI, Minority Business Enterprise (Disadvantaged Business Enterprise/ Women's Business Enterprise), Relocation and Land Acquisition, Disadvantaged Business Enterprise in Department of Transportation Programs and Nondiscrimination on the basis of disability, respectively.

46 CFR Part 381 regulations promulgated by the Maritime Administration governing cargo preference requirements.

36 CFR Part 800 regulations promulgated by the Advisory Council on Historic Preservation.

31 CFR part 205 regulations promulgated by the Department of the Treasury governing letter of credit.

40 CFR subchapters C & D regulations promulgated by the Environmental Protection Agency pertaining to administration of clean air and water pollution requirements.

29 CFR Parts 5 and 215 regulations promulgated by the Department of Labor pertaining to construction labor and transit employee protections.

- C. Drug and Alcohol Testing. SUB-RECIPIENT shall have in place, maintain, and implement a plan and a program for compliance with U.S. DOT Drug and Alcohol Regulations, as specified in 49 CFR 40, 49 CFR 653 and 49 CFR 654. Said plan and program shall be modified to incorporate and comply with such other regulations as were adopted in the USDOT and published in the Federal Register as of February 14, 1994 and any subsequent changes thereto.

EXHIBIT "E," page 5

EXHIBIT “F”

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION**

MASTER AGREEMENT

**For Federal Transit Administration Agreements authorized by
49 U.S.C. chapter 53, Title 23, United States Code (Highways),
the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users,
as amended by the SAFETEA-LU Technical Corrections Act of 2008,
the Transportation Equity Act for the 21st Century, as amended,
the National Capital Transportation Act of 1969, as amended, the American Recovery and Reinvestment
Act of 2009, Pub. L. 111-5, February 17, 2009, or other Federal laws that FTA administers.**

**FTA MA(18)
October 1, 2011**

<http://www.fta.dot.gov/documents/18-Master.pdf>

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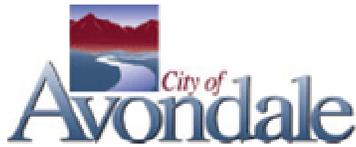
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EXHIBIT "G"

Required Local Provisions

1. Transactional Conflicts of Interest. All parties hereto acknowledge that this Agreement is subject to cancellation by either party pursuant to the provisions of A.R.S. Section 38-511.
2. Assignability; Successors and Assigns. This Agreement, and any rights or obligations hereunder, shall not be transferred or assigned by SUB-RECIPIENT without the prior written consent of PHOENIX. Any attempt to assign without such prior written consent shall be void.
3. Employment and Organization Disclaimer. This Agreement is not intended to, and will not, constitute, create, give rise to, or otherwise recognize a joint venture, partnership, or formal business association or organization of any kind as existing between the parties, and the rights and the obligations of the parties shall be only those expressly set forth herein. Neither party is the agent of the other nor is neither party authorized to act on behalf of the other party. SUB-RECIPIENT shall be liable to PHOENIX for any financial liability arising from any finding to the contrary by any forum of competent jurisdiction.
4. Entire Agreement; Modification (No Oral Modification). This Agreement, and any Exhibits, Attachments, or Schedules attached hereto, constitute the full and complete understanding and agreement of the parties. It 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 in writing signed by both parties.
5. 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 hereof; this Agreement shall thereafter be construed as though the invalid or unenforceable term or provision were not contained herein.

6. Compliance with Laws, Permits and Indemnity. SUB-RECIPIENT shall comply with all applicable laws, ordinances, regulations and codes of federal, state and local governments. Further, SUB-RECIPIENT shall be solely responsible for obtaining all approvals and permits necessary to perform the work called for under this Agreement. In addition, SUB-RECIPIENT shall indemnify, defend, save and hold harmless PHOENIX from all loss, cost and damage by reason of any violation of the provisions of this paragraph and from any liability including, but not limited to, fines, penalties and other costs arising therefrom.
7. Applicable Law and Litigation. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Arizona. Any and all litigation between the parties arising from this Agreement shall be litigated solely in the appropriate state court located in Maricopa County, Arizona.
8. Inspection and Audit. The provisions of Section 35-214, Arizona Revised Statutes, shall apply to this Agreement. PHOENIX shall perform the inspection and audit function specified therein.
9. Non-waiver. Should PHOENIX 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 the requirements of this Agreement or of any of the terms or provisions thereof.
10. Labor Protective Provisions. SUB-RECIPIENT shall fully cooperate with PHOENIX in meeting the legal requirements of the labor protective provisions of Section 5333(b) of Title 49 U.S. Code [formerly Section 13(c) of the Federal Transit Act of 1964, as amended (49 U.S.C. 1609)] and the Labor Agreements and side letters currently in force and certified by the United States Department of Labor. Changes, including changes in service and any other changes that may adversely affect transit employees, shall be made only after due consideration of the impact of such changes on Section 5333(b) protections granted to employees. SUB-RECIPIENT shall defend and indemnify PHOENIX from any and all claims and losses due, or alleged to be due, in whole or in part, to the consequences of changes made by SUB-RECIPIENT, that were not requested by PHOENIX which result in grievances, claims and/or liability.
11. Sudan and Iran. Pursuant to A.R.S. §§ 35-391.06 and 35-393.06, SUB-RECIPIENT certifies that it does not have a scrutinized business operation, as defined in A.R.S. §§ 35-391 and 35-393, in either Sudan or Iran.



CITY COUNCIL REPORT

SUBJECT:

Public Hearing - Proposed Extension of the Alternative Expenditure Limitation (Home Rule)

MEETING DATE:

February 21, 2012

TO: Mayor and Council

FROM: Kevin Artz, Finance & Budget Director (623) 333-2011

THROUGH: Charlie McClendon, City Manager

PURPOSE:

To hold a public hearing on the proposed extension of the Alternative Expenditure Limitation (Home Rule).

BACKGROUND:

The Arizona State Constitution and Arizona Revised Statutes impose an expenditure limitation on every City and Town in the State. The state-imposed limitation uses expenditures of local revenues from Fiscal Year 1979-80 as a baseline. Each year, the Economic Estimates Commission (EEC) adjusts baseline expenditures based on a standard inflation rate and the population growth in the community to establish a new expenditure limitation (See Attachment A for FY 11/12 final estimates).

Certain revenues are specifically excluded from the state-imposed expenditure limitation. For example, revenues received from the issuance of bonds, revenues received from interest or dividends, revenue from Federal grants, and intergovernmental revenue already subject to another entity's expenditure limitation, are all exempt from the expenditure limit.

If the state-imposed limitation does not allow for the expenditure of sufficient local funds (less the exemptions listed above), State law provides four options to potentially solve this problem.

- 1 Alternative expenditure limitation (local home rule option)
- 1 A permanent base adjustment
- 1 A capital projects accumulation fund
- 1 A one-time override

All of the options require voter approval. If none of the options are approved by the voters, the state-imposed limitation will apply.

In November of 2009, the Avondale voters adopted an alternative expenditure limitation (first approved in 1981 with seven subsequent extensions). The Home Rule option expires at the end of Fiscal Year 2013-14.

The home rule option allows the City to adopt its own "alternative" expenditure limitation and sets the limit at its adopted budget. In other words, it allows the City to establish its own expenditure limitation without being subject to the state-imposed limitation. Home rule must be approved by the voters, and is good for a period of four years.

DISCUSSION:

In order to extend the home rule option, State law requires that two public hearings be held (scheduled for February 21st and March 5th) and the City Council to adopt a resolution proposing the extension, immediately following the second public hearing (March 5th). The alternative expenditure limitation will then be submitted to the voters of Avondale at an election to be held in August of 2012.

The final state-imposed expenditure limitation for the City of Avondale for Fiscal Year 2011-12 is \$46,305,905. Staff estimates that the City would have approximately an additional \$50,000,000 of exclusions from the state imposed limit for a total expenditure limitation of approximately \$96,300,000. The final adopted budget for FY 11-12 is approximately \$163,000,000 which would put the City approximately \$66,700,000 over the state-imposed limitation, if the Home Rule option were not in effect for Fiscal Year 2011-12. There are several factors that would cause the City of Avondale to exceed the state-imposed expenditure limit.

First, the state-imposed expenditure limitation, which is calculated with population and inflation factors, is based on projections for one year's needs. In a high growth community, this doesn't allow for a City to plan infrastructure and city services to stay ahead of the growth curve (i.e., building a wastewater treatment facility with excess capacity, instead of one year's capacity needs).

Second, the City of Avondale has changed significantly since 1979-80, when the baseline was established. Current citizens are demanding increased services and amenities that may not have been required in 1980. The increased expectations of the residents are not adequately factored into the population and inflation calculation performed by the State. As a result, the state-imposed limitation is based on expectations from 25 years ago, instead of the expectations of today's residents.

Finally, the State imposed limitation does not account for additional revenue sources received since 1979-80. The City of Avondale has established development impact fees and two, voter approved half-percent sales tax increases since 1979-80. Both of these local revenue sources are subject to the State-imposed limitation. Without an alternate expenditure limitation, the City would be unable to spend sales tax dollars from a voter approved initiative to increase funding for public safety, and for basic water, sewer and street infrastructure improvements.

As the state-imposed expenditure limitation for the City of Avondale is not sufficient to allow the City to expend its local revenues and provide the basic services that the residents require, the City must seek approval from the voters to authorize an extension to the home rule option.

BUDGETARY IMPACT:

Approval of the alternative expenditure limitation does not increase or decrease the city's budget or taxes. Budget decisions are still made annually by the City Council. The home rule option allows this to continue and the adopted budget becomes the expenditure limitation.

RECOMMENDATION:

Hold a Public Hearing for the proposed extension of the Alternative Expenditure Limitation (home rule option).

ATTACHMENTS:

Click to download

 [FY 11-12 Final Estimates](#)

ECONOMIC ESTIMATES COMMISSION

Department of Revenue Building



Janice K. Brewer
Governor

Gale Garriott
Chairman

Elliott D. Pollack
Member

Alan E. Maguire
Member

May 31, 2011

City/Town Managers and Finance Directors
State of Arizona

RE: Revised Final FY 2011/12 Expenditure Limits

The Arizona State Demographer's Office has revised the July 1, 2010 population estimates.

The Economic Estimates Commission (EEC) has adjusted the final expenditure limits for FY 2011/12 which incorporates the revised population estimates. The formula is shown below:

$$\frac{2010 \text{ Population}}{1978 \text{ Population}} \times \frac{\text{GDP Implicit Price Deflator 2010}}{\text{GDP Implicit Price Deflator 1978}} \times \text{FY 1979/80 Base Limit} = \text{Revised Final FY 2011/12 Expenditure Limit}$$

Please contact Jim Chang with the State Demographer's Office at (602) 771-1236 if you have questions regarding your population figures for 2010.

If you have questions regarding your expenditure calculation, please contact Diane Sosinski in Economic Research and Analysis at (602) 716-6797.

Sincerely,

ECONOMIC ESTIMATES COMMISSION

Handwritten signature of Gale Garriott in cursive.

Gale Garriott, Chairman

REVISED FY 2011/12 FINAL EXPENDITURE LIMITATIONS: CITIES & TOWNS

CITY	POPULATION **		POPULATION FACTOR	INFLATION FACTOR*	FY 1979/80 BASE LIMIT	REVISED FINAL
	2010	1978				FY 2011/12 EXPENDITURE LIMITATION
APACHE JUNCTION	35,828	9,500	3.7714	2.7392	\$1,581,484	\$16,337,324
AVONDALE	76,468	6,900	11.0823	2.7392	\$1,525,417	\$46,305,905
BENSON	5,098	3,925	1.2989	2.7392	\$1,317,815	\$4,688,477
BISBEE	5,560	6,860	0.8105	2.7392	\$1,625,337	\$3,608,372
BUCKEYE	51,019	3,175	16.0690	2.7392	\$1,048,270	\$46,140,099
BULLHEAD CITY	39,518	13,830	2.8574	2.7392	\$5,493,553	\$42,997,504
CAMP VERDE	10,875	5,650	1.9248	2.7392	\$2,072,112	\$10,924,742
CAREFREE	3,358	1,744	1.9255	2.7392	\$1,642,262	\$8,661,514
CASA GRANDE	48,664	14,100	3.4513	2.7392	\$18,793,221	\$177,667,120
CAVE CREEK	5,005	2,025	2.4716	2.7392	\$656,393	\$4,443,858
CHANDLER ***	236,687	23,500	10.0718	2.7392	\$7,245,951	\$199,902,896
CHINO VALLEY	10,825	2,400	4.5104	2.7392	\$255,094	\$3,151,622
CLARKDALE	4,103	1,200	3.4192	2.7392	\$255,616	\$2,394,007
CLIFTON	3,314	4,515	0.7340	2.7392	\$1,656,956	\$3,331,370
COLORADO CITY	4,821	1,730	2.7867	2.7392	\$987,191	\$7,535,450
COOLIDGE ***	11,855	6,775	1.7498	2.7392	\$1,530,413	\$7,335,303
COTTONWOOD	11,238	4,200	2.6757	2.7392	\$1,105,601	\$8,103,177
DEWEY HUMBOLDT	3,896	4,080	0.9549	2.7392	\$1,533,271	\$4,010,466
DOUGLAS	17,410	12,600	1.3817	2.7392	\$17,190,988	\$65,064,817
DUNCAN	695	700	0.9929	2.7392	\$177,389	\$482,426
EAGAR	4,894	2,450	1.9976	2.7392	\$627,268	\$3,432,165
EL MIRAGE	31,911	4,025	7.9282	2.7392	\$774,680	\$16,823,410
ELOY ***	16,657	6,300	2.6440	2.7392	\$1,419,813	\$10,282,638
FLAGSTAFF	65,985	32,000	2.0620	2.7392	\$22,522,966	\$127,214,898
FLORENCE	25,537	3,175	8.0431	2.7392	\$714,110	\$15,732,887

REVISED FY 2011/12 FINAL EXPENDITURE LIMITATIONS: CITIES & TOWNS

CITY	POPULATION **		POPULATION FACTOR	INFLATION FACTOR*	FY 1979/80 BASE LIMIT	REVISED FINAL
	2010	1978				FY 2011/12 EXPENDITURE LIMITATION
FOUNTAIN HILLS	22,444	10,190	2.2026	2.7392	\$4,107,576	\$24,781,571
FREDONIA	1,312	850	1.5435	2.7392	\$329,695	\$1,393,941
GILA BEND	1,932	1,575	1.2267	2.7392	\$684,678	\$2,300,542
GILBERT	209,048	4,250	49.1878	2.7392	\$2,346,450	\$316,144,435
GLENDALE	227,217	84,000	2.7050	2.7392	\$67,955,628	\$503,505,380
GLOBE	7,533	6,550	1.1501	2.7392	\$2,436,186	\$7,674,574
GOODYEAR	65,404	2,500	26.1616	2.7392	\$4,125,000	\$295,600,663
GUADALUPE	5,540	4,300	1.2884	2.7392	\$549,792	\$1,940,246
HAYDEN	663	1,200	0.5525	2.7392	\$408,838	\$618,729
HOLBROOK	5,055	5,450	0.9275	2.7392	\$2,585,121	\$6,567,842
HUACHUCA CITY	1,850	1,690	1.0947	2.7392	\$317,153	\$950,979
JEROME	441	395	1.1165	2.7392	\$132,688	\$405,780
KEARNY	1,947	2,665	0.7306	2.7392	\$950,057	\$1,901,234
KINGMAN	28,081	8,745	3.2111	2.7392	\$4,426,488	\$38,934,015
LAKE HAVASU CITY	52,469	13,000	4.0361	2.7392	\$4,711,264	\$52,085,163
LITCHFIELD PARK	5,467	3,835	1.4256	2.7392	\$3,542,818	\$13,834,061
MAMMOTH	1,425	1,960	0.7270	2.7392	\$425,048	\$846,475
MARANA	35,051	1,425	24.5972	2.7392	\$202,239	\$13,625,976
MARICOPA	43,598	3,790	11.5034	2.7392	\$10,601,417	\$334,047,653
MESA***	439,929	130,000	3.3841	2.7392	\$54,090,640	\$501,393,280
MIAMI	1,834	2,615	0.7013	2.7392	\$878,262	\$1,687,209
NOGALES	20,880	11,740	1.7785	2.7392	\$3,245,377	\$15,810,467
ORO VALLEY	40,984	1,475	27.7858	2.7392	\$272,317	\$20,725,940
PAGE	7,253	4,375	1.6578	2.7392	\$6,429,631	\$29,197,309
PARADISE VALLEY	12,810	10,425	1.2288	2.7392	\$6,645,509	\$22,367,553

REVISED FY 2011/12 FINAL EXPENDITURE LIMITATIONS: CITIES & TOWNS

CITY	POPULATION ** 2010	POPULATION 1978	POPULATION FACTOR	INFLATION FACTOR*	FY 1979/80 BASE LIMIT	REVISED FINAL FY 2011/12 EXPENDITURE LIMITATION
PARKER	3,088	2,485	1.2427	2.7392	\$1,145,364	\$3,898,626
PATAGONIA	909	925	0.9827	2.7392	\$213,500	\$574,695
PAYSON	15,270	4,305	3.5470	2.7392	\$1,267,280	\$12,312,766
PEORIA	154,171	10,500	14.6830	2.7392	\$18,247,857	\$733,909,330
PHOENIX***	1,449,242	717,000	2.0213	2.7392	\$229,200,625	\$1,268,979,784
PIMA	2,390	1,465	1.6314	2.7392	\$275,000	\$1,228,882
PINETOP-LAKESIDE	4,289	2,835	1.6277	2.7392	\$1,214,814	\$5,416,296
PRESCOTT	39,771	19,250	2.0660	2.7392	\$8,495,931	\$48,079,939
PRESCOTT VALLEY	38,839	1,520	25.5520	2.7392	\$380,054	\$26,600,323
QUARTZSITE	3,676	2,115	1.7381	2.7392	\$974,825	\$4,640,970
QUEEN CREEK	26,448	2,525	10.4745	2.7392	\$818,277	\$23,477,336
SAFFORD	9,580	6,200	1.5452	2.7392	\$20,484,597	\$86,699,860
SAHUARITA	25,347	1,629	15.5599	2.7392	\$713,697	\$30,418,409
SAN LUIS	25,614	1,690	15.1562	2.7392	\$724,909	\$30,094,792
SCOTTSDALE	217,365	83,000	2.6189	2.7392	\$55,861,444	\$400,719,827
SEDONA	10,020	7,050	1.4213	2.7392	\$2,960,687	\$11,526,256
SHOW LOW	10,666	3,800	2.8068	2.7392	\$1,443,667	\$11,099,468
SIERRA VISTA	45,047	24,050	1.8731	2.7392	\$10,055,882	\$51,592,683
SNOWFLAKE	5,609	3,000	1.8697	2.7392	\$741,469	\$3,797,295
SOMERTON	14,329	3,540	4.0477	2.7392	\$681,742	\$7,558,747
SOUTH TUCSON	5,672	6,275	0.9039	2.7392	\$1,879,168	\$4,652,702
SPRINGERVILLE	1,966	1,400	1.4043	2.7392	\$678,299	\$2,609,119
STAR VALLEY	2,303	2,255	1.0213	2.7392	\$744,113	\$2,081,629
ST. JOHNS	3,487	4,100	0.8505	2.7392	\$819,104	\$1,908,202
SUPERIOR	2,835	4,700	0.6032	2.7392	\$682,763	\$1,128,086

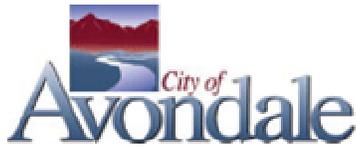
REVISED FY 2011/12 FINAL EXPENDITURE LIMITATIONS: CITIES & TOWNS

CITY	POPULATION ** 2010	POPULATION 1978	POPULATION FACTOR	INFLATION FACTOR*	FY 1979/80 BASE LIMIT	REVISED FINAL FY 2011/12 EXPENDITURE LIMITATION
SURPRISE	117,688	3,550	33.1515	2.7392	\$9,500,000	\$862,669,780
TAYLOR	4,126	1,740	2.3713	2.7392	\$245,508	\$1,594,640
TEMPE	161,974	102,000	1.5880	2.7392	\$65,579,379	\$285,252,583
THATCHER	4,872	3,170	1.5369	2.7392	\$1,860,674	\$7,833,132
TOLLESON	6,573	4,190	1.5687	2.7392	\$966,494	\$4,153,038
TOMBSTONE	1,381	1,600	0.8631	2.7392	\$508,007	\$1,201,048
TUCSON	520,795	311,400	1.6724	2.7392	\$138,097,586	\$632,632,406
TUSAYAN	558	606	0.9208	2.7392	\$470,573	\$1,186,877
WELLTON	2,884	900	3.2044	2.7392	\$460,150	\$4,038,958
WICKENBURG	6,353	3,300	1.9252	2.7392	\$6,600,000	\$34,803,747
WILLCOX	3,761	2,985	1.2600	2.7392	\$10,497,909	\$36,230,886
WILLIAMS	3,032	2,100	1.4438	2.7392	\$1,254,501	\$4,961,329
WINKELMAN	352	1,010	0.3485	2.7392	\$183,579	\$175,251
WINSLOW	9,666	7,725	1.2513	2.7392	\$4,995,579	\$17,121,873
YOUNGTOWN	6,154	2,100	2.9305	2.7392	\$559,874	\$4,494,130
YUMA	93,275	34,500	2.7036	2.7392	\$15,663,245	\$115,996,545
TOTAL	5,032,765	1,896,649	2.6535		\$894,301,168	\$7,834,265,704

* SOURCE: (2010 GDP Implicit Price Deflator - Global Insight, March 2011)/(1978 GDP Implicit Price Deflator) = 110.662/40.400

** FIGURES AS OF JULY 1 (SOURCE: DEPT. OF ECONOMIC SECURITY)

*** ANNEXATIONS NOT ACCOUNTED FOR IN THIS DOCUMENT.



CITY COUNCIL REPORT

SUBJECT:

Memorandum of Understanding - Avondale Police Officers Association

MEETING DATE:

February 21, 2012

TO: Mayor and Council

FROM: David Fitzhugh, Assistant City Manager (623) 333-1014

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff requests that the City Council approve an inaugural Memorandum of Understanding (MOU) between the City of Avondale and the Avondale Police Officers Association (AvPA) developed pursuant to Ordinance 1323-808 and authorize the City Manager and City Clerk to execute the documents related to this agreement.

BACKGROUND:

The City Council adopted Ordinance 1323-808 on August 8, 2008 prescribing the process by which recognized employee organizations can address certain issues of concern. Through the Ordinance, eligible employees were granted the right to be represented by an employee organization certified as an exclusive representative. The Avondale Police Officers Association (AvPA) seeks to represent all sworn Police Officers and Sergeants employed by the City of Avondale. The Association members began their process with 12 months of meet and discuss and, upon completion, began their process of recognition under meet and confer, specifically excluding discussion related to health care as prescribed by the Ordinance.

The Association substantially met the meet and discuss requirements and submitted their request to meet and confer with the City Manager within the prescribed time frame. Negotiations between the Association members and City Management began on November 1, 2011 utilizing Interest Based Bargaining methods, facilitated by a staff member from the Federal Mediation and Conciliation Council. All team members agreed this process resulted in an agreement acceptable to both parties.

DISCUSSION:

The meet and confer negotiations were concluded and a draft Memorandum of Understanding was distributed to all parties on January 31, 2012. The Draft MOU was reviewed by the City's labor attorney prior to its being distributed. The AvPA called a special meeting to discuss this inaugural MOU with their membership and obtained ratification the week of February 6, 2012. The MOU provides a foundation document for the future. During this initial meet and confer process the administration and the AvPA representatives worked collaboratively to understand the issues, see the other's perspective and find agreements. The AvPA submitted forty (40) items for discussion, of which twelve (12) had potential fiscal impact; eight (8) were withdrawn; and the balance were related to the establishment of the Association or restatement of existing federal, state or local laws. The Association's two most important issues were establishing a step system with placement based on years in rank and the establishment of specific policies regarding internal affairs investigations. The City Manager established a target value of wage and benefit concessions of 3% of the represented employees' existing salaries (approximately \$250,000) which was consistent with financial information presented to Council in November 2011.

The significant items agreed to that have cost impacts are:

1. Section 4.1 Base Rate of Pay: The Association desired a pay system based on 8 steps and placement based on years in rank. Placing each employee in the proposed step equal to their years of service was cost prohibitive. This request was fulfilled through the development of a 16/12 Officer/Sgt., 2.5% per step plan. However, for the 1st year of the agreement, it was agreed that represented employees would be placed at the step nearest their current pay plus a maximum of three steps. This is equated to an average of 3.6% increase in salary costs for the represented members. The agreement will be re-opened in December 2012 to meet and confer on wage rates only. These discussions must be concluded by February 15, 2013.
2. Section 4.2 Specialty Pay: The Association requested new specialty pay in the amount of 3% of their base hourly wage rate for Sergeants supervising the Field Training Officers when they are training new officers and \$175 per month for the Canine Handlers. We also moved the existing specialty pay items from the City's Personnel Policies and Procedures Manual to this MOU.
3. Section 4.3.B Compensatory Time Off Accrual Limits: Accrual limits have been increased from 60 hours (40 hours of overtime worked) to 75 hours (50 hours of overtime worked). Other provisions of Compensatory Time Off were brought forward from the City's Personnel Policies and Procedures Manual into the MOU.
4. Section 4.6 Ballistic Vest Allotment: This request increases the Ballistic Vest Allotment from \$600 per employee to \$690 per employee.

There were also issues that the Employee Group wanted as assurances; some to capture existing practices. They were:

1. Section 4.4 Compensation for Holidays Worked: This section was brought forward from the existing City Personnel Policies and Procedures Manual which establishes recognized holidays and how time/overtime will be computed and paid.
2. Section 4.7 Market Salary Survey: This section stipulates that the City will conduct a salary survey prior to the end of the contract year. This survey will serve as information to discuss future compensation of the represented employees and is subject to the City Manager's approval of the cities surveyed and financial condition of the City.
3. Section 4.9 On Call Status: This section was brought forward from the City's Personnel Policies and Procedures Manual. It prescribes how and when a represented employee may be placed on call and establishes compensation when so placed.
4. Article 5 Chief of Police Internal Affairs Investigation Policy Committee: The represented employees wanted to create a mechanism ensuring their voice in the development of internal affairs investigation policy. The Chief of Police initiated an Internal Affairs Investigation Policy Committee prior to the start of negotiations with the intent to review and amend portions of the existing departmental policy General Order 41-1 and 41-2. This committee is comprised of members of the Police Department Command Staff, Professional Staff and representatives of the Association. Article 5 of the MOU formalizes this departmental committee, its makeup, purpose and minimum meeting requirements. This committee is to advise the Police Chief on matters relative to departmental policy only. It is not an advisory or subcommittee of the Council.
5. Article 8 Fiscal Crisis: This Article exists to establish management rights to reopen the MOU should there be a loss of revenues or legal matter resulting in a fiscal crisis.

This Memorandum of Understanding is in effect from July 1, 2012 until midnight June 30, 2014. It will be re-opened in December 2012 to meet and confer on wage rate issues only.

BUDGETARY IMPACT:

The Finance and Budget Department estimated the financial impact of this agreement to be approximately \$303,085 due primarily to the base wage rate increase (\$259,364). The balance is due to new specialty pay for the Sergeants supervising Field Training Officers (\$10,020), Canine Handlers (\$5,316), increase in the Ballistic Vest Allotment (\$9,540) and the increase in Compensatory Time Accrual (\$18,845). The increase in Ballistic Vest Allotment and Compensatory Time Accrual are estimated assuming all represented members replace their vests and the City pays cash for the increase accrued compensatory time. Staff does not believe this will be the case but since it is possible, the estimated costs have been included.

The proposed 2012-13 budget will also include an increase in City contributions to the Public Safety Retirement System estimated to be \$178,760 for Police Department represented employees. This increase was not included in the negotiations but is an additional expense to be addressed in future budgets.

RECOMMENDATION:

Staff recommends the City Council approve the inaugural Memorandum of Understanding (MOU) between the City of Avondale and the Avondale Police Officers Association (AvPA) developed pursuant to Ordinance 1323-808 and authorize the City Manager and City Clerk to execute the documents related to this agreement.

ATTACHMENTS:

Click to download

 [AzPA MOU 2012-2014](#)

MEMORANDUM OF UNDERSTANDING

JULY 1, 2012 THROUGH JUNE 30, 2014

CITY OF AVONDALE

AND

AVONDALE POLICE OFFICERS ASSOCIATION

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PREAMBLE

This Memorandum of Understanding is entered into between the City of Avondale and the Avondale Police Association.

WHEREAS: The parties, through their designated representatives, met and conferred in good faith pursuant to Ordinance 1323-808 as approved by the Avondale Mayor and Council on August 8, 2008 to set forth within this Memorandum of Understanding (MOU) the full and entire understanding of the parties mutual agreement concerning wages, hours, benefits, (excluding healthcare), and such other items mutually agreed upon by the employee organization and the City Manager as allowed by the Municipal Code of the City of Avondale, for employees who are represented by the Employee Organization; and

WHEREAS: The parties hereby acknowledge that the provisions of MOU are not intended to and cannot abrogate the authority and responsibility of Avondale as a government entity provided for under the statutes of the State of Arizona, code or ordinance of Avondale; and

WHEREAS: The purpose of this MOU is to promote and ensure harmonious relations, cooperation and understanding between Avondale and the Employee Organization.

NOW THEREFORE, Avondale and the employee organization, having reached this complete agreement, concerning wages, hours, and benefits, as allowed by the Ordinance, for the term specified submit this MOU to the Mayor and the City Council of Avondale with their joint recommendation that the body adopts its terms.

ARTICLE 1
RIGHTS OF THE EMPLOYEE ORGANIZATION

Section 1.1 Recognition

- A. For the duration of the Memorandum and in accordance with all applicable provisions of the City Code of Avondale, Avondale hereby recognizes the Avondale Police Association (“Employee Organization”) as the official and exclusive representative for the purpose of “Meet and Confer” for all employees who are represented by the Avondale Police Association as described below:

Police Employee Group - All full-time sworn regular, non-probationary, City Police Officers, and all classifications up to and including the rank of Sergeant will be referred to as unit members.

- B. All personnel acting as official city or employee group representative during any process set forth in this division must have completed the FMCS “Interest Based Problem Solving” training program. (Ord. No. 1323-808, 2, 8-18-08)

Section 1.2 Rights of Represented Employees

- A. Represented Employees are entitled to all rights as provided by the Ordinance 1323-808 and this MOU for the term of the MOU.
- B. The Employee Organization shall represent all of the unit members fairly and equally without regard to whether or not an employee is a member of the Employee Organization. An unrepresented employee can object to Employee Organization’s representation if he or she desires.
- C. Represented Employees are entitled to rights as defined in ARS 38-1101 through ARS 38-1106.

Section 1.3 Membership Dues Deduction

- A. The City will develop a payroll deduction process whereas it will deduct an amount specified in writing by the employee and transmit such amount to the Employee Organization each pay period. Such deductions shall be made only when the employee’s earnings for such pay period are sufficient after other legally required deductions are made. Under no circumstances will the City share with the Employee Organization the nature, type, or fact of other legally-required deductions for any of its Employees. The Employee Organization reserves the right during the term of this MOU to increase the amount withheld for all employees as a generalized dues increase. However, any such increase will require separate and written authorization from every affected employee.

- B. The City assumes no liability on account of any actions taken pursuant to this section. The Employee Organization agrees to indemnify and hold harmless the City of Avondale against any and all claims, suits or other forms of liability arising out of its deductions from a represented employee's pay of Employee Organization membership dues. The Employee Organization assumes full responsibility for the disposition of the deductions so made, once they have been sent to the Employee Organization.
- C. Employees may initiate, discontinue or amend Employee Organization payroll deductions by written authorization at any time during the term of the MOU. The Employee and the Employee Organization hold the City harmless for any and all claims associated with the employee's decision to amend deductions pursuant to this Section.
- D. If a court of competent jurisdiction concludes that the Employee Organization's indemnification is invalid for any reason in reference to association dues deduction any action pursuant to this Section, the Employee Organization agrees to pay the City's defense costs and any judgment resulting from said action.

ARTICLE 2 MANAGEMENT RIGHTS

The City and City Manager are entitled to all rights as provided by Ordinance 1323-808 and this MOU for the term of the MOU. Nothing in this MOU can contradict or abrogate any City Ordinance, state or federal law. The provisions in the Ordinance dealing with management rights are reincorporated fully herein by reference.

ARTICLE 3 PROHIBITION OF STRIKES AND WORK INTERRUPTIONS

Strikes, lock outs and related employment actions as defined in Ordinance 1323-808 are prohibited and shall be subject to discipline as specified in the Ordinance.

ARTICLE 4
EMPLOYEE COMPENSATION AND HOURS OF WORK

Section 4.1 Base Rates of Pay

- A. The positions represented by this Memorandum of Understanding are Police Officers and Police Sergeants (“Unit Members”). The rates of pay in the following tables represent the base rate of unit member’s hourly pay excluding any specialty pay. The primary goals of this wage related meet and confer process were to 1) create a separation between the Police Officer and Police Sergeant classifications; and 2) place all unit members in the nearest step without loss of wage rate based on years of service in the rank.

- B. For the fiscal year July 1, 2012 to June 30, 2013, unit members will be placed in the nearest step without loss of base rate of pay plus a maximum of three (3) steps as set forth in the tables below. Each step represents 2.5% of the hourly wage rate. These tables also created a 1.6% separation between the Police Officer Step 16 and the Sergeant Step 1 wage rates.

- C. For the fiscal year July 1, 2013 to June 30 2014, this Memorandum of Understanding will be reopened to meet and confer on potential hourly wage rate increases only. No other issues will be discussed during this meet and confer process. If the MOU is re-opened for this limited purpose, the process will begin during the week of January 7, 2013 and conclude no later than February 15, 2013. Notification of said request must be provided to the City Manager from the Employee Organization no later than December 1, 2012.

- D. Increments in the tables below reflect annual progression through the range if a unit member meets required performance standards (“meets standards”), funding is available and authorization is provided by the Avondale City Council. Progression is effective in the first pay period of the fiscal year.

Police Officer Increments	Hourly
Step 1 – Minimum	\$23.00
Step 2	\$23.58
Step 3	\$24.17
Step 4	\$24.77
Step 5	\$25.39
Step 6	\$26.02
Step 7	\$26.67
Step 8	\$27.34
Step 9	\$28.02
Step 10	\$28.72
Step 11	\$29.44
Step 12	\$30.18
Step 13	\$30.93
Step 14	\$31.70
Step 15	\$32.49
Step 16	\$33.30

Police Sergeant Increments	Hourly
Step 1 – Minimum	\$33.83
Step 2	\$34.68
Step 3	\$35.55
Step 4	\$36.44
Step 5	\$37.35
Step 6	\$38.28
Step 7	\$39.24
Step 8	\$40.22
Step 9	\$41.23
Step 10	\$42.26
Step 11	\$43.32
Step 12	\$44.40

Section 4.2 Specialty Pay

Unit members are compensated for specialty pays based on the certification of special skills as follows:

A. Field Training Officer Pay

Police officers and coordinating Sergeant, assigned to fulfill the duties of field training officer (“FTO”), shall receive FTO pay at an amount pay in the amount of 5% above base

hourly rate for the term of the assignment once they have successfully completed the National Association of Field Training Officer's ("NAFTO") certification course or other appropriate training. FTO's on administrative leave and/or medical leave in excess of eighty (80) hours shall not receive the FTO pay until they are approved to return to full-duty status and resume the duties of FTO.

B. Sergeant Supervising Field Training Officer Pay

Police Sergeants, assigned to supervise a field training officer (FTO), shall receive FTO supervisory pay in the amount of 3% above base hourly rate for the term of the assignment. This specialty pay is only applicable for that time the FTO is training an Officer in Training (OIT) and is under the supervision of the Sergeant.

C. Detective Pay

Police officers and Sergeants assigned by the Police Chief to fulfill the duties of detective shall receive detective pay in the amount of 5% above base hourly rate of pay for the term of the assignment. Detective pay begins as soon as they begin performing in the position. Detectives on administrative leave and/or on medical leave in excess of eighty (80) hours shall not receive the detective pay until they are approved to return to full-duty status and resume the duties of detective.

D. Internal Affairs Investigator Pay

Sergeants assigned by the Police Chief to fulfill the duties of internal affairs investigator, shall receive pay in the amount of 5% above base hourly rate for the term of the assignment. Internal affairs investigator pay begins as soon as they begin performing in the position. Sergeants on administrative leave and/or on medical leave in excess of eighty (80) hours shall not receive the internal affairs investigator pay until they are approved to return to full-duty status and resume the duties of Internal Affairs Investigator.

E. Motor Pay

Police officers and sergeants, assigned by the Police Chief to fulfill the duties on motor patrol, shall receive motor pay in the amount of 5% above base hourly rate for the term of the assignment. Motor pay begins as soon as they begin performing in the position. Police officers on administrative leave and/or on medical leave in excess of eighty (80) hours shall not receive the motor pay until they are approved to return to full-duty status and resume the duties of motor patrol.

F. Canine Handler Stipend

Police officers assigned by the Police Chief to fulfill the duties of Canine Handler, shall receive a canine handler stipend in the amount of \$175 per month for the term of the assignment. The canine handler stipend begins as soon as they begin performing in the position. Police officers on administrative leave and or/on medical leave in excess of

eighty (80) hours shall not receive the canine handler stipend until they are approved to return to full-duty status and resume the duties of canine handler.

Section 4.3 Compensatory Time Off

A. Relationship to Overtime:

- a. Consistent with Federal, State and the City of Avondale's Policy and Procedures Manual, when overtime compensation is authorized and performed, it shall be compensated at the rate of one and one-half (1.5) the amount of his/her hourly rate for hours worked in excess of forty (40) hours within the designated work week.
- b. In lieu of monetary payment at the overtime pay rate set forth in the City of Avondale's Policy and Procedures Manual, non-exempt unit members may elect to take compensatory time off ("comp time") for overtime hours worked, with the approval of the supervisor. Upon approval, overtime shall be compensated at the rate of one and one-half (1.5) of comp time for every one hour of overtime worked by the unit member.

B. Accrual Limits:

- a. The maximum number of comp time hours that any unit member will be permitted to accrue is 75 hours (50 hours of actual overtime worked). The use of comp time by the unit member shall be scheduled in accordance with department guidelines and procedures. A unit member shall be permitted to use accrued comp time within a reasonable period after it is requested if, in the judgment of the supervisor, it does not cause an undue hardship on the operation of City services.

C. Pay out:

- a. The City reserves the right to pay out compensatory time balances to the unit member at any time.
- b. All compensatory time that is not used and remains on the books at the close of the fiscal year will be paid out to the unit member.
- c. Upon separation from City Employment, unit members with a compensatory time balance will be paid at their current regular rate of pay. A unit member who is promoted or reclassified to an exempt position will be paid for any comp time balance at their regular rate of pay prior to the personnel action.

Section 4.4 Compensation for Holidays Worked

- A. Sworn Police Officers and Sergeants will receive eight (8) hours of compensation for each for the following holidays as they occur in the calendar year. The personal day will be scheduled with the fiscal year for use by the unit member. Unused personal days or holidays will not be paid out at the end of the fiscal year or termination of employment. Personal days and holidays will not be carried over into a new fiscal year. A personal day (8 hours) will be given to the unit member on July 1 of each fiscal year. New hires will receive a personal day upon their hire.

<p>Sworn Police Officers and Sergeants Holiday Independence Day Labor Day Veteran’s Day Thanksgiving Day After Thanksgiving Christmas Day New Year’s Day Martin Luther King Day President’s Day Memorial Day</p> <p>*Personal Day to be scheduled by the unit member (Personal Day should be tracked via comment in Kronos Timekeeping System by Supervisor.</p>

- B. These holiday hours will NOT count as hours worked for the purpose of overtime compensation or service under the Family Medical Leave Act. Unit members who are required to work on designated holidays shall be given, in addition to regular salary, Holiday Differential Pay equal to one-half (1/2) of their regular straight-time hourly rate for hours worked on designated holidays.
- C. Overtime Compensation: Holiday differential is paid in addition to any overtime pay due. Holiday differential pay will not be included in determining the regular hourly rate of pay for the purpose of calculating overtime payments or FMLA service hours.

Example 1: Unit member works 14 hours on the holiday (Wednesday*) and works three (3) other days in the week.

Time	Total	M	T	W*	TH	F	S	SU
Hours Worked	46	10	11	14	11			

End Result:

Hours Worked:	46
Holiday Compensation at straight rate:	8
Regular Hours at straight time:	40
Overtime at 1.5:	6
Holiday Differential at 0.5:	14

Example 2: Unit member works 14 hours on holiday (Wednesday*) and calls in sick on Monday for the entire shift of 10 hours.

Time	Total	M	T	W*	TH	F	S	SU
Hours Worked	36		11	14	11			
Sick Leave	10	10						

End Result:

Hours Worked:	36
Holiday Compensation at straight rate:	8
Sick Leave at straight rate:	10
Regular Hours at straight time:	54
Overtime at 1.5:	0
Holiday Differential at 0.5:	7

Section 4.5 Ballistic Vest Allotment

- A. Unit members shall be eligible for an allotment not to exceed six hundred ninety dollars (\$690) for the purchase of approved protective ballistic vests. Vests shall be purchased pursuant to Department procedures and guidelines.
- B. Should a unit member purchase an approved ballistic vest through vendors that are not participating on the voucher system, the unit member must pay the entire amount of the vest. Once the vest is purchased the unit member may submit a receipt to the budget manager of the police department for reimbursement of the amount paid not to exceed \$690.

Section 4.6 Market Salary Survey

During September prior to the end of the contract year, the City will conduct a market survey of the compensation offered by bench mark West Valley Police Agencies, as identified by the City Manager for the classifications of Police Officer and Police Sergeant. The survey shall serve as information to discuss the compensation of the represented employee group. Any discussions regarding the adjustment of compensation to the represented employee group shall be subject to the overall financial condition of the City as determined by the City Manager.

Section 4.7 Work Week

Workweek shall be defined as seven consecutive 24-hour periods beginning at 12:01 am on Monday and ending at 12:00 midnight the following Sunday.

Section 4.8 On Call Status

The Chief of Police may make non-exempt positions eligible for on-call compensation when the unit member is required to be on-call. The unit member must be accessible and available for work upon being contacted via telephone, cell phone, or pager (beeper). The unit member must be available to report to work within a reasonable time after being contacted by the City, if needed. The unit member must also be in a physical condition that allows him/her to resume duty.

A. Definitions

“On-call” means when an off-duty unit member must remain available to be called back to work on short notice if the need arises. A unit member is considered to be on-call only when assigned by the City.

“On-call pay” means the additional compensation awarded to unit members who are required to remain on-call during off-duty hours.

“On-call status” means the state of an off-duty unit member required to remain on-call. A unit member is considered to be in on-call status only when assigned by the City. Hours spent in on-call status will not be considered hours worked for the purposes of calculating overtime compensation.

“On-call time” means the periods of time when a unit member is off-duty but is required to remain on, or close to, the City premises or to respond to a call or page within a specified period of time, resulting in the unit member being unable to effectively use such time to attend to his or her own personal activities. On-call time will not be considered hours worked for the purposes of calculating overtime compensation.

“Callback” means when a unit member has left the work site and is requested to respond on short notice (either by returning to work or via telephone/computer) to a work situation to:

- Avoid significant service disruption.
- Avoid placing unit members or the public in unsafe situations.
- Protect and/or provide emergency services to people, property and/or equipment.
- Respond to emergencies.

B. On-call/Callback Compensation

- a. *On-call Pay Rate:* A unit member assigned to on-call status will be compensated at the rate of two dollars per hour (\$2.00/hr) as on-call pay of on-call time. On-call hours begin after the completion of the on-call unit member's scheduled workday and continue until resuming work the following workday.
- b. *Callback Pay Rate:* When an on-call unit member is called back to work after completing the regular work schedule and leaving the premises, the unit member shall be paid for time actually worked upon return or a minimum of three (3) hours at their regular hourly or base rate, whichever is greater.
- c. *On-call Status Hours Not Included in Overtime Compensation Calculation:* On-call time will not be considered hours worked for the purposes of calculating overtime compensation. Only hours actually worked (over forty (40) hours in a workweek) will be included in the computation of overtime unless otherwise specified in these policies.
- d. *On-call Pay Exclusions:* Unit members will not receive on-call pay when they are:
 - On vacation leave
 - On sick leave
 - On administrative leave
 - Receiving short-term disability benefits
 - Receiving worker's compensation benefits
 - On bereavement leave
 - On an approved leave of absence
 - Not available to work
 - Restricted to light duty
 - Restricted from performing work activities

Unless explicitly assigned to be in on-call status, an employee will not be provided on-call pay.

C. On-Call Duty Requirements

- a. Unit members serving on-call status must adhere to all of the following requirements:
 - Thoroughly check the working status of the cell phone before on-call status begins and maintain it in operational mode at all times.
 - When notified, respond and arrive at work within one (1) hour or less.
 - Arrive fully capable of performing the function of the job.

- b. If a unit member does not meet the criteria as defined above, he/she will forfeit the on-call pay from the time of the first attempt to contact him/her to the end of the “on-call” time period.
- c. Each unit member will be responsible for documenting each time he/she is on-call and forward to his/her supervisor to approve the on-call time.
- d. A unit member who is assigned to on-call status and cannot be reached or does not report within one (1) hour of being contacted may face disciplinary action.

ARTICLE 5

CHIEF OF POLICE INTERNAL AFFAIRS POLICY COMMITTEE

All Complaints relating to alleged performance issues or misconduct will be accepted and thoroughly investigated by the Avondale Police Department. Any discipline levied shall not be done without just cause. The Complaint and Disciplinary Process agreed upon is referenced within Avondale Police Department General Order 41-1 and 41-2, and the City’s Human Resources Policies.

Section 5.1 Policy:

A Chief of Police Internal Affairs (IA) Policy (General Orders GO-41-1, and 41-2) Committee shall be formed to guide the implementation of the new IA policy or changes in federal, state, or local law, to provide input on any changes under consideration to the IA policy, and for unit members to provide feedback on the practical application of the IA policy. The IA committee serves as an advisory group to the Chief of Police concerning IA policy matters. The staff committee is not an arm of the City Council, nor a public body or committee created by the City Council. The committee shall be appointed by the Chief, its general membership denoted below, and shall not report to the City Council. The method by which the IA Policy committee is formed and functions is outlined below.

Section 5.2 Chief of Police IA Committee

- A. The Chief’s IA committee shall be comprised of a minimum of six to the maximum of ten unit members. The following positions are to be included as standing members of the IA Committee;
 - Chief of Police (Chairperson of Committee)
 - Department Management and staff professionals, as determined by the Chief
 - Recognized Employee Organization leadership, as determined by the Recognized Employee Organization
 - Recognized Employee Organization Police Officer, as determined by the Recognized Employee Organization
 - HR Director or appointee

- B. The Chief shall contact the Recognized Employee Organization President asking for recommendations of employees that may want to serve in the three positions from the Recognized Employee Organization. If, after the e-mail to the Recognized Employee Organization President, there are not enough employees on the committee, the Chief of Police will send an email to all unit members asking for volunteers. Volunteers must notify their supervisors of their participation on the IA committee.
- C. The IA committee shall hold a minimum of two meetings per fiscal year, to address IA committee concerns, issues and/or business. Each IA committee member will be responsible for generating ideas, reviewing issues, providing input, and may be assigned specific research tasks. Participation on the IA committee is voluntary. The Chief of Police through the City Manager maintains final decision making authority regarding any policy decisions addressed by the IA committee.

ARTICLE 6 RETIREMENT BENEFITS

Retirement benefits for the employees shall continue to be provided by enrollment in the Arizona Public Safety Personnel Retirement System. Deductions shall be made from each paycheck in accordance with the laws and the City shall contribute the amount required by law.

ARTICLE 7 EXISTING BENEFITS

Health Care Benefits are excluded by the Ordinance 1323-808 from negotiations. However, such benefits will be provided to Police Officers identical to Health Care Benefits provided to every other City employee. Other benefits not specifically articulated within this MOU are also provided identical to those provided to every other City employee, unless specified by law.

ARTICLE 8 FISCAL CRISIS

- A. In the event that during the term of this MOU the City of Avondale experiences loss of revenues or legal requirements that if not resolved during the budget year would result in a fiscal crisis, this MOU may be reopened at the direction of City Council or City Manager.

- B. If the City Manager or Council determines that a mid-year reduction in force, reduction in pay, or benefits affecting Police Employee Organization Group is necessary due to a Fiscal Crisis then the City Manager will promptly give notice to the Employee Organization Group. Such notice shall include the reasons for the reopening, the estimated amount of the budget shortfall, proposed specific budget impacts, curtailed police services, and possible reductions as proposed by the Police Chief that must be addressed to ensure a balanced budget.

- C. The City and Employee Organization shall follow the Meet and Confer process for a period of no more than 12 business days in an effort to reach accord on how best to address their recommendation for reductions impacting the police represented unit members. Should an accord be reached, the City Manager shall include them in a recommendation to the Council regarding the proposed mid-year reduction in force, pay, or benefits. If an accord cannot be reached, the Employee Organization may waive the right to arbitration, at which time the City Manager may take any actions legally permitted under state law, the City Charter, and/or ordinances.

ARTICLE 9 TERM AND EFFECT

Section 9.1 Term

- A. This Memorandum MOU shall become effective July 1, 2012 and remain in full force and effect until June 30, 2014, in accordance with the provisions of the City Code Chapter 2 Article II, unless an intervening financial crisis or other such matter (specifically provided for in this MOU) should occur. However, as specified in Section 4, the MOU will be reopened in January 2013 to review wage rates.

- B. In the event of a specific conflict between (1) the City of Avondale Policy and Procedures Manual, administrative directives, departmental rules and regulations, or work place practices and (2) a memorandum of understanding that results from the process established by this division, the memorandum of understanding will prevail. (Ordinance 2-65 (c)).

Section 9.2 Reopener Clause

This Memorandum constitutes the total and entire agreement between the parties and no verbal statement shall supersede any of its provisions. Only by mutual consent of both parties may specific article(s) within the agreement be reopened, with the exception of the conditions outlined in Article 4, Section 4.1 Base rate of Pay and Article 7 Fiscal Crisis.

ARTICLE 10 MISCELLANEOUS

Section 10.1 Copies of the Memorandum

The employee Organization shall post a copy of this MOU on their association website so that it is distributed to all represented unit members at no cost to the City. The City agrees to post a copy of this MOU on the City Intranet.

Section 10.2 Public Records

Public Records requests must be processed through the City of Avondale City Clerk's Office. To obtain copies of a public record, a Request for Public Document form must be completed through the City Clerk. The City Clerk strives to process all requests within 72 hours; however, depending upon the nature of the request it may take additional time to produce the requested documents. All public records require the authorization of the City Attorney prior to release.

Section 10.3 Saving Clause

In the event that any of the terms or provisions of this Memorandum are declared invalid or unenforceable by any Court of competent jurisdiction or any federal or state government agency having jurisdiction over the subject matter of this Memorandum, the remaining terms and provisions will not be affected.

Section 10.4 Memorandum Renewal Clause

In the event that neither party to this Memorandum reopens this agreement for discussion in accordance with the City's Meet and Confer policy this agreement will automatically renew for an additional twelve months.

IN WITNESS WHEREOF, the parties have set their hand this ____ day of _____ 2012.

CITY OF AVONDALE

By:

AVONDALE POLICE ASSOCIATION

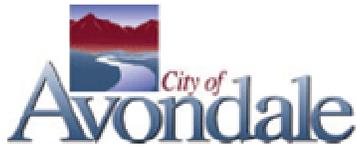
By:

Charlie McClendon, City Manager

Paul Herrmann, AvPA President

ATTEST:

Carmen Martinez, City Clerk



CITY COUNCIL REPORT

SUBJECT:

Memorandum of Understanding - Avondale
Professional Firefighters Association Local 3924

MEETING DATE:

February 21, 2012

TO: Mayor and Council

FROM: David Fitzhugh, Assistant City Manager (623) 333-1014

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff requests that the Mayor and City Council approve a Memorandum of Understanding (MOU) between City of Avondale and the Avondale Professional Firefighters Association, International Association of Firefighters Local 3924, developed pursuant to Avondale Ordinance 1323-808 and authorize the City Manager and City Clerk to execute the documents related to this agreement.

BACKGROUND:

The City of Avondale and the Avondale Professional Firefighters Association (APFA) entered into their inaugural MOU on May 16, 2011. The MOU's purpose was to identify and memorialize current wages, clarify pay practices and capture certain Fire Department specific policies and practices. That MOU's term was from July 1, 2011 until June 30, 2012. APFA representatives submitted budgetary items in a timely manner in accordance with Ordinance 1323-808 in preparation for contract negotiations for 2012-2014. Members of the City Manager's team and the APFA met and conferred beginning on November 2, 2011 and successfully concluded their negotiations on February 8, 2012.

DISCUSSION:

During the meet and confer process, administration and APFA representatives worked collaboratively to understand the issues, see the other's perspective and find agreement. Representatives of the APFA originally submitted eleven (11) items for discussion. Six (6) of the items had a potential budgetary impact, three (3) were proposed new articles and two (2) were clarifications or changes to Articles of the existing MOU. The City Manager established a target value of wage and benefit concessions at 3% of the unit members existing salaries (approximately \$110,000) which was consistent with financial information presented to Council in November 2011.

The most significant issue to the represented employees was the establishment of a 7 step base wage rate plan with placement in the plan based on years in rank. They hoped to address concerns regarding pay in relation to years of service and to provide a mechanism to ensure movement through the pay range. Several other items were discussed and agreement was reached on the following contract provisions:

1. **Section 4.3 Specialty Pay:** The Association proposed an increase to the Paramedic and Technical Rescue Pay. It has been several years since the Paramedic pay was increased and the employee representatives felt this increase was justified to reflect the passage of time and the true worth of the responsibilities placed on qualified employees. This is a skill set utilized on a frequent basis and is beneficial to the City. The Technical Rescue pay was slightly increased three (3) years ago when the method of payment was changed at the request of the represented employees from a monthly stipend to an hourly rate. This is also a highly technical skill set and is

beneficial to the City to have trained personnel available to execute rescues in our rivers (during floods) and the adjoining county park in the Estrella Mountains.

2. **Section 4.5 Pay Rates:** The Budget and Finance Department staff evaluated APFA's proposal and found that the cost of implementation of a Seven Step pay scale and placing represented employees in a step based on their years in rank greatly exceeded the target value established by the City Manager. After discussing several alternative step plan scenarios, the APFA representatives preferred to accept a 3% across the board increase for all represented employees with the caveat that the agreement will be re-opened in the fall of 2012 to negotiate Fiscal Year 2013-2014 wage rates.
3. **Section 4.9 Move Up Pay:** The representatives brought back a request to increase the move up pay percentage for a qualified firefighter performing the duties of a Captain from 5% to 10%. This increase is commensurate with the additional responsibilities assumed with the assignment.
4. **Section 7.1.B Fiscal Crisis:** The existing MOU includes a clause that preserves the City's right to reopen the MOU should a fiscal crisis emerge resulting in either a reduction in force or pay affecting the represented employees. This clause includes a provision where the City Manager will solicit comments from the employee's representatives prior to advising Council on a course of action. It also includes terms stating that a reduction in force would be implemented in reverse order of a member's length of service. This section was amended to add terms for re-employment in order of length of service.
5. **Section 8.2 Sick Leave Conversion:** This is a new article proposed by the APFA's representatives. It provides for the conversion of three (3) hours of sick leave for one (1) hour of vacation leave for any represented employee that has accumulated over 672 hours of sick leave. They cannot reduce their sick leave balance below 672 hours through this conversion process. This ratio is consistent with our existing policy to convert it to cash at the time of separation or retirement which is a future obligation.
6. **Section 9.1.B Fitness Examination:** This amends the existing section to allow a represented employee the option to be placed on light duty assignments if their mandatory annual examination results in work restrictions and if cleared for such an assignment by the examining physician. This is intended to be a limited time assignment with the intent that the employee will return to their regular position. Should it be determined that the employee is no longer able to perform the essential functions of their position, the Fire Chief will coordinate the appropriate course of action with the Human Resources Department.
7. **Section 11.2 Retreat Funds:** This is a section in the existing agreement that further restricts the use of specific Fire Department funds budgeted for the annual labor/management retreat and awards banquet. Several years ago the employees gave up approximately \$13,000 of their collective pay increase (Fire Chief's discretionary increase) to be used for this purpose. The APFA wanted assurances that these funds are not allocated to other uses or departments.

The meet and confer negotiations were concluded on February 8, 2012 and a draft Memorandum of Understanding was distributed to all parties on February 9, 2012. The Draft MOU was reviewed by the City's labor attorney prior to its distribution. The Association called a special meeting to discuss this MOU with their membership and ratified the contract the week of February 12, 2012.

BUDGETARY IMPACT:

The Finance and Budget Department estimated the financial impact of this agreement to be approximately \$228,875 due primarily to the base wage rate increase (\$109,426). The balance is due to the increase in move up pay from 5% to 10% (\$1,207), a \$0.20/hour increase in Paramedic Specialty Pay (\$17,433) and Technical Rescue (\$7,960). The conversion of sick leave to vacation

leave could potentially cost \$92,850 assuming all eligible represented employees converts the allowed amount of sick leave and then chooses to sell the time back to the City. Staff does not believe this will be the case; however, since it is possible, the costs were estimated.

The proposed 2012-13 budget will also include a mandated increase in City contributions to the Public Safety Retirement System estimated to be \$29,080 for Fire Department represented employees. This increase was not included in the negotiations but is an additional expense to be addressed in the proposed 2012-13 budget.

RECOMMENDATION:

Staff recommends that the Mayor and City Council approve a Memorandum of Understanding (MOU) between City of Avondale and the Avondale Professional Firefighters Association, International Association of Firefighters Local 3924, developed pursuant to Avondale Ordinance 1323-808 and authorize the City Manager and City Clerk to execute the documents related to this agreement.

ATTACHMENTS:

Click to download

 [APFA MOU 2012-2014](#)

MEMORANDUM OF UNDERSTANDING

JULY 2012 THROUGH JUNE 2014

CITY OF AVONDALE

AND

AVONDALE PROFESSIONAL FIREFIGHTERS ASSOCIATION

LOCAL 3924

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PREAMBLE

This Memorandum of Understanding is entered into between the City of Avondale and the Avondale Professional Firefighters Association, International Association of Fire Fighters, Local 3924.

WHEREAS: the parties, through their designated representatives met and conferred in good faith pursuant to Ordinance 1323-808 as approved by the Avondale Mayor and Council on August 8, 2008 to set forth within this Memorandum of Understanding the full and entire understanding of the parties mutual agreement concerning wages and hours as allowed by the Municipal Code of the City of Avondale, for employees who are represented by the Employee Organization; and

WHEREAS: the parties recognize the importance of continuing and maintaining harmonious relations, cooperation and understanding between Avondale and its employees; and

WHEREAS: the parties hereby acknowledge that the provisions of the Memorandum are not intended to and cannot abrogate the authority and responsibility of Avondale as a government entity provided for under the statutes of the State of Arizona, code or ordinance of Avondale:

NOW THEREFORE, Avondale and the Employee Organization having reached this complete agreement concerning wages, hours, and benefits, as allowed by the Ordinance, for the term specified submit this Memorandum to the Mayor and the City Council of Avondale with their joint recommendation that the body adopt its terms.

ARTICLE 1
RIGHTS OF EMPLOYEES AND EMPLOYEE ORGANIZATION

Section 1.1 Recognition & Employee Organization Rights

- A. For the duration of the Memorandum and in accordance with all applicable provisions of the City Code of Avondale, Avondale hereby recognizes the Employee Organization as the official and exclusive representative for the purpose of “Meet and Confer” and with respect to wages and hours as defined by the Ordinance, for all employees who are represented by the Employee Organization as described below:

Fire Employee Group - All full-time sworn regular, non-probationary, City firefighters, and all classifications up to and including the rank of Captain will be referred to as unit members.

- B. Employee representatives will be released from duty with full pay to participate with the City Management Team with prior notification to their supervisor.
- C. Employee representatives who participate in meetings covered by this Article at times other than their normal work shift shall not receive compensation and said hours are not considered time worked for any purpose, including computing overtime and compensatory time.

Section 1.2 Rights of Represented Employees

- A. Represented Employees are entitled to all rights as provided by the Ordinance and this Memorandum for the term of the Memorandum.
- B. The Employee Organization shall represent all of the employees in the unit fairly and equally without regard to whether or not an employee is a member of the Employee Organization. An unrepresented employee can object to Union representation if he or she desires.

Section 1.3 Membership Dues Deductions

- A. The City will develop a payroll deduction process whereas it will deduct an amount specified in writing by the employee and transmit such amount to the Employee Organization each pay period. Such deductions shall be made only when the employee’s earnings for such pay period are sufficient after other legally required deductions are made. Under no circumstances will the City share with the Employee Organization the nature, type, or fact of other legally-required deductions for any of its Employees. The Employee Organization reserves the right during the term of this Memorandum of Understanding to increase the amount withheld for all employees as a generalized dues increase. However, any such increase will require separate and written authorization from every affected employee.
- B. The City assumes no liability on account of any actions taken pursuant to this section. The Employee Organization agrees to indemnify and hold harmless the City of Avondale against any and all claims, suits or other forms of liability arising out of its deductions from a represented

employee's pay of Employee Organization membership dues. The Employee Organization assumes full responsibility for the disposition of the deductions so made, once they have been sent to the Employee Organization.

- C. Employees may initiate, discontinue or amend union payroll deductions by written authorization at any time during the term of the Memorandum of Understanding. The Employee and the Employee Organization hold the City harmless for any and all claims associated with the employee's decision to amend deductions pursuant to this Section.

**Article 2
Management Rights**

Section 2.1 Management Rights

The City and City Manager are entitled to all rights as provided by Ordinance 1323-808 and this Memorandum for the term of the memorandum. The provisions in the Ordinance dealing with management rights are reincorporated fully here by reference.

**ARTICLE 3
PROHIBITION OF STRIKES AND WORK INTERRUPTIONS**

Section 3.1 No Strike, No Lock-Out

Strikes, lock outs and related employment actions as defined in the Ordinance are prohibited and shall be subject to discipline as specified in the Ordinance.

**ARTICLE 4
EMPLOYEE COMPENSATION & HOURS OF WORK**

Section 4.1 Base Rate of Pay

A. The positions represented by this Memorandum of Understanding are Firefighter, Fire Engineer and Fire Captain. Each position has an established pay range with a minimum, mid-point and maximum base rate of pay. Movement through the range is dependent on job performance of the unit member and available funding, as determined by the City Manager and City Council., respectively. The pay ranges represent the base rate or unit member's hourly pay excluding any specialty pay.

Non-Exempt Firefighter Pay Ranges

		Minimum	Mid-Point	Maximum
Firefighter	Grade 51	\$14.64	\$17.90	\$21.19
Fire Engineer	Grade 55	\$18.00	\$22.04	\$26.06
Fire Captain	Grade 62	\$21.26	\$26.02	\$30.80

Section 4.2 Regular Hourly Rate

A unit member's base pay plus any specialty pay that may apply and is the rate used for the purpose of computing overtime and pension contributions as required by law.

Section 4.3 Specialty Pay

Unit members are compensated for specialty pays based on the certification of special skills as follows:

Paramedic	\$2.20 per hour
Technical Rescue	\$1.00 per hour

Section 4.4 Stipend

Bi-Lingual Level III Pay: \$230 per month paid over 26 pay periods (bi-weekly) except in a Leap Year

Section 4.5 Pay rates

- A. For the fiscal year July 1, 2012 to June 30, 2013, unit members will be granted a three percent (3%) merit increase to their base hourly rate of pay. Should the City Council approve an increase for non-represented employees greater than three percent (3%), the unit members will be granted an increase equal to that amount approved for non-represented employees. .
- B. For the fiscal year July 1, 2013 to June 30 2014, this Memorandum of Understanding will be reopened to meet and confer on a potential step plan and/or base rate of pay increase only. No other issues will be discussed during this meet and confer process. The meet and confer process shall conform with Ordinance 1323-808 Section 2-65, Memorandum of Understanding and be concluded on or before February 15, 2013.
- C. If, during the term of this MOU, a unit member's Rate of Pay is equal to or greater than the Maximum Pay Range listed in section 4.1, the City will issue a merit award as an amount granted by this contract less applicable deductions. This merit award is not subject to applicable rules under FLSA, as it is not for wages earned. Payment will be made in July of the new fiscal year.

The fixed merit awards are as follows:

Captain: \$2500
Engineer: \$2250
Firefighter: \$2000

Section 4.6 Set Work Schedule

City Government reserves the right to establish work periods for sworn firefighters. The City has established a 14-day work period for unit members working 24 or 48 hours shifts commonly called

a 56-hour work week. The set schedule of duty hours for unit members consists of rotating 48 hours on duty and 96 off duty, resulting in three different work periods which consists of 96 hours for period 1, 120 hours for period 2, and 120 hours for period 3.

Section 4.7 Overtime

Overtime calculations will be determined based upon the set schedule for the 14-day work period. The Fair Labor Standards Act (FLSA) guarantees that unit members working the 24 or 48 hour shift arrangement described above will be compensated at 1.5 times their Regular Hourly Rate of pay for regularly scheduled hours worked over 106 hours.

Vacation, Sick Leave, Civic Duty and Bereavement Leave hours taken in a 14-day work period shall not count as hours worked for the purposes of overtime except when the hours taken are needed to fulfill the employee's 120 hour work period.

The special work periods and overtime rules are only for employees who meet the statutory definition of "employees in fire protection activities", who are trained in fire suppression, have the legal authority and responsibility to engage in fire suppression and are employed by the City's fire department.

Section 4.8 Guaranteed Minimum Call In

If a unit member is called in after 7:00 a.m. to cover a shift and works at least 22 hours of the 24 hour shift, the unit member will receive payment for the entire 24 hours. If the unit member works less than 22 hours, the unit member will only be paid for the remaining hours of that shift worked.

Section 4.9 Move-Up Pay

A unit member will receive additional compensation for working a minimum of 12 hours to fill a position of a higher rank. To be eligible for Move-Up positions and Move-Up Pay, the member must have successfully completed the department's Move-Up requirements within department policy for the position and maintain certification by completing the required continuing training requirements. The unit member will be paid an additional amount of their regular hourly rate of pay for time spent in a Move-Up capacity in accordance with the chart below. Move-Up Pay and status to the position of Battalion Chief shall not in any case extend beyond more than thirty days.

Move up pay percentage of increase to hourly rate will be determined by the member's rank and the position they are filling, according to the following table:

<u>Rank</u>	<u>Assignment</u>	<u>Increase</u>
Firefighter	Engineer	5%
Firefighter	Captain	10%
Engineer	Captain	5%
Captain	Battalion Chief	5%

If any unit member is placed on administrative leave or medical leave while in a Move-Up Pay capacity, the unit member shall not receive the Move-Up Pay until they are approved to return to full-duty status and resume the duties of the assigned position, if a need still remains.

Section 4.10 56 to 40-Hour Positions

A unit member assigned to a 40-hour position for one year or less will not have his or her leave accruals adjusted and will not be granted a Holiday Bank. Vacation and sick leave accruals will remain at the 56 hour accrual rate, which includes holiday leave. This unit member will be treated as if he or she was still on the 56 hour schedule. Vacation and sick leave will be charged using the 1.4 conversion (1.4 hours charged for each 1.0 hour used).

A unit member assigned to a 40-hour position for more than one year will be assigned an appropriate Holiday Bank. The unit member's vacation and sick leave accrual rates will be adjusted to the 40-hour rates, and usage will be charged as actual hours used. Unit members leave balances will not be adjusted during moves to and from 40-hour positions.

A unit member assigned to a 40-hour position will have their pay adjusted according to the conversion formula described below:

56 to 40 hour conversion factor:

1. 56 base hourly rate minus any specialty pay (if applicable)
2. Base hourly rate X conversion factor of 1.4375
3. Add back in assignment differential pay (10% BLS or 12% ALS)
4. Add back 1.00 for TRT pay if applicable
5. Add back in adjustment for paramedic pay if applicable of \$2.20

40 to 56 hour conversion factor:

The conversion of 40 to 56 hour will be the reverse of the above conversion process

Section 4.11 On Call Status

A.) A 40 hour employee on call-out status will be compensated at two (2) dollars per hour. These hours begin after the completion of the employee's scheduled workday and continue until resuming work the following workday.

1.) Reporting Pay

If a 40 hour employee on call-out status is requested to and does report to work at the designated work location in a timely fashion but no work is available upon arrival, that employee will be paid a minimum of two (2) hours at their regular hourly rate and sent home.

2.) Time Worked

Employees will not receive "call-out" pay for time worked.

3.) Overtime

Only hours actually worked (over 40 hours in a workweek) will be included in the computation of overtime unless otherwise specified in these policies.

4.) No Call-Out Pay

Employees will not receive call-out pay when they are:

- On vacation leave
- On sick leave
- On Administrative Leave
- Receiving short-term disability benefits
- Receiving worker's compensation benefits
- On bereavement leave
- On an approved leave of absence
- Not available to work
- Restricted to light duty
- Restricted from performing specific work activities

B.) Criteria

Criteria for call-out pay status must meet the following:

- 1.) Thoroughly check the working status of the pager or cell phone before "call-out" status begins and maintains it in operational mode at all times;
- 2.) When notified by pager must respond and arrive at work within one (1) hour or less;
- 3.) Must arrive fully capable of performing the functions of the job;
- 4.) If an employee does not meet the criteria as defined above, he/she will forfeit the "call-out" pay from the time of the first attempt to contact him/her to the end of the "call-out" period.
- 5.) Each employee will be responsible for completing a time sheet card documenting each time he/she is on "call" and forward to his/her supervisor to approve the "call-out" time. Time sheet cards must be submitted to the supervisor by Monday morning of each week.

ARTICLE 5 ABSENT WITH RELIEF

Section 5.1 Absent With Relief

"Absent with Relief" (AWR) is the practice of individual Firefighters working another individual firefighter's scheduled shift. The Fire Department through its Employee Involvement Process may establish standards of assessing equal qualifications, timelines and other rules for requesting AWR. However, the practice of using AWR cannot be eliminated.

The City is not responsible for AWR repayment or any disputes that arise between individual Firefighters. The Employee Organization also agrees not to adopt any policy that provides an employee with any undue compensation that may be considered a gift of City funds.

**ARTICLE 6
EXISTING BENEFITS**

Section 6.1 Existing Benefits

Health Care Benefits are excluded by the Ordinance from negotiations. However, such benefits will be provided to Firefighters identical to Health Care Benefits provided to every other City employee. Other benefits not specifically articulated within this MOU are also provided identical to those provided to every other City employee, unless specified by law.

**ARTICLE 7
FISCAL CRISIS**

Section 7.1 Fiscal Crisis

- A. In the event that during the term of this Memorandum of Understanding the City of Avondale experiences loss of revenues or legal requirements that if not resolved during the budget year would result in a fiscal crisis, this Memorandum of Understanding may be reopened at the direction of City Council or City Manager. The City and City Manager retain all rights granted by the City Charter and City Code. Nothing in this section of the MOU constitutes a merit system regulation as discussed in the City Charter.

- B. If the City Manager or Council determines that a mid-year reduction in force or reduction in pay affecting Firefighters Employee Group is necessary due to a Fiscal Crisis then the City Manager will promptly give notice to the Employee Group(s). The City Manager shall give notice in a manner which, considering all of the circumstances then existing, gives the Employee Group(s) reasonable opportunity to provide comments to the City Manager before the City Manager makes a recommendation or gives advice to the Council regarding the proposed mid-year reduction in force or pay. A reduction in force will be implemented in reverse order of unit members' length of active career service in the Fire Department. Any unit member affected by layoff through no fault of his/her own will be eligible for re-employment and will be afforded the opportunity to return to work in order of length of active career service, before new represented employees are hired, as long as the returning unit member meets minimum job classification requirements at time of re-hire.

**ARTICLE 8
BENEFITS**

Section 8.1 - Sick Leave

Sick leave is an approved period of absence granted to an employee due to:

- 1. Illness, injury or other medical condition which renders the employee unable to perform the essential duties of the position;

2. Illness, injury, medical condition evaluation procedure or treatment by a licensed health care practitioner, of an employee’s immediate family member. For the purpose of this section, immediate family member shall be defined as a husband, wife, son, daughter, mother, father, brother, sister, son-in-law, daughter-in-law, parent-in-law, brother-in-law sister-in-law, grandparent or grandchild of an employee, step-child, a child whose adoption is in process or other legal dependents.

Unit members working a 56-hour work week will accrue sick leave at 5.18 hours per bi-weekly pay period. Sick leave hours shall accrue without a limit.

When unit member is promoted, demoted or transferred, he or she shall retain all accrued sick leave. Unit members will be compensated upon resignation 33.3% of accrued sick leave paid at the member’s regular hourly rate of pay.

Section 8.2 – Sick Leave Conversion

Any unit member who has accumulated over 672 hours of sick leave can convert three hours for one hour of sick leave to vacation hours to coincide with MOU Section 8.5 Vacation sell back policy.

Section 8.3 – Sick Leave Pay Out for Retirement

Unit members who voluntarily retire with 10 years of continuous service with the City will receive 100% of his or her accrued sick leave up to 250 hours at the member’s regular hourly rate or 33.3% of the total balance of accrued sick leave, whichever is greater.

Unit members with 20 years of continuous service with the City will receive 100% of his or her accrued sick leave up to 500 hours at the member’s current hourly rate, or 33.3% of the total balance of accrued sick leave, whichever is greater.

Section 8.4 - Vacation Accruals

Unit members working a 56-hour work week do not receive a holiday bank. Holiday leave is built into their vacation leave accrual schedules. Full-time sworn firefighters working a scheduled 56-hour work week will accrue vacation as follows:

0 to 5 years	10.28 hours per pay period
5 to 10 years	11.20 hours per pay period
10 to 15 years	12.12 hours per pay period
15 years +	13.05 hours per pay period

Sworn firefighters working a set schedule 56-hour work week shall have a maximum accrual of vacation time of 336 hours. Vacation leave accumulated in excess of 336 hours as of the last day of the last pay period in the calendar year shall be forfeited, unless the City Manager authorizes an exception. Requests for an exception must be processed through Human Resources and include a plan to use the excess hours in the following calendar year.

Section 8.5 - Vacation Sell Back

Unit members are permitted to sell back vacation at the member's regular hourly rate of pay twice annually in May and November. Members desiring to sell back vacation must submit the appropriate form by the last administrative work day of April and or October. Vacation sell back checks will be issued in the last pay period of May and November. Eligible employees that wish to sell back vacation will submit a request to the department director on the "sell back form" located on the intranet. Department directors need to determine if their department is able to financially support the request. If the department's budget only can support a number of employees to receive the sell back; department directors will use seniority to determine their approval or denial of the request for sell back of vacation and finally submitted to Human Resources/Payroll for final approval and payment.

A unit member must have a balance of 96 hours within their vacation bank to sell back. Vacation sell back is subject to the overall financial condition of the City as determined by the City Manager. The vacation accrual cap will be waived for one year for a unit member who was denied vacation sell back due to fiscal constraints of the City and denied the use of vacation leave due to staffing limitations.

Section 8.6 Vacation Leave Payout

Unit members who terminate their employment with the City will be entitled to compensation for their earned and unused vacation leave at their regular rate of pay for up to a maximum accrual of 240 hours for eligible employees assigned to a 40 hour per week schedule and 336 for sworn firefighters assigned to a 56 hour per week shift assignment.

Section 8.7 Other Leaves

A. Bereavement Leave

Bereavement leave is defined in the City's Personnel Policies. Unit members receive 56 hours of bereavement leave for immediate family members. Unit members receive 11 hours of bereavement leave for the unit member's uncle, aunt or cousin. Bereavement leave shall count as hours worked for the purposes of calculating overtime when needed to fulfill the employees set schedule.

B. Military Leave

Unit members that are or may become members of the National Guard or the Military Reserves shall receive all the benefits provided for by USERRA and all other applicable federal and state laws. The unit member shall provide the orders or authorization from the U.S. Armed Forces, National Guard or Military Reserves to the Human Resources Department prior to departure for military leave. As to compensation, the unit member will receive paid military leave not to exceed 336 hours in any two consecutive years.

C. Civic Duty Leave

A unit member shall receive civic duty leave with pay while serving as a juror, complying with a subpoena, and voting. Except for voting pursuant to ARIZ. REV. STAT. § 16-401 (primary elections) or ARIZ. REV. STAT. § 16-402, (general elections) as amended, an employee granted

civic duty leave shall report for work whenever the employee's presence is not required for the civic duty.

D. General Election Day

The bi-annual general election day (the first Tuesday following the first Monday in November of every even-numbered year) is not a legal holiday. However, every public officer or employee is entitled to have adequate time to vote as set forth in ARIZ. REV. STAT. § 16-402, as amended. Arrangements must be made with the supervisor prior to general Election Day and the supervisor may determine which hours are more suitable in accordance with the needs of the department.

E. Appearance as a Witness

A unit member who is subpoenaed as a witness by any court or administrative, executive, or judicial body in this state may be absent with paid civic duty leave unless the testimony or evidence to be given relates to the employee's own personal business.

F. Jury and Witness Fees

Unit members who are granted civic duty leave when called for jury duty or subpoenaed as a witness shall remit any payment received to the City Finance and Budget Department, except for mileage allowance or meals.

**ARTICLE 9
MEDICAL AND PHYSICAL FITNESS EXAMINATIONS**

Section 9.1 Fitness Examinations

- A. During the term of this Memorandum of Understanding the Fire Department will schedule members for a medical and physical fitness evaluation yearly. The medical and physical fitness evaluation will be of the same design and quality as the product which is in place through the Phoenix Fire Department's Health Center in June 2010 and in keeping with the intent of the National Fire Protection Association 1582. Disputes as to the equivalency will be determined by the Fire Chief.
- B. If during the mandatory annual physical exam and testing, a unit member is restricted from full duty for further evaluation, the unit member will be offered the option of working light duty or using sick leave until returned to full duty. The unit member must be cleared for the light duty assignment by the physician. The Chief may consult with Human Resources to determine the applicability of the light duty assignment. If the assessment concludes that the unit member is not qualified to perform the essential functions of his/her job, the Chief will consult with Human Resources to determine the applicability of the Family Medical Leave Act and/or American with Disabilities Act.

Section 9.2 Records Storage

The tiered health assessment results are for the unit members' benefit and cannot be used for any other purposes. The Employee Involvement Process may continue to discuss this tool.

Details of the medical examination will be considered confidential and will not be released to the Fire Department without the express written approval of the patient. The Fire Department will not intimidate, threaten, or take any disciplinary action against a unit member who refuses to release his medical records. This prohibition does not apply to the Medical Physical Fitness Examination summary report or the information required by the Retirement Board.

**ARTICLE 10
UNIFORMS, CLOTHING AND EQUIPMENT**

Section 10.1 Uniform Allowance

The Fire Department has a budget line item that provides \$750.00 allowance per member per year for uniform and boot allowance. Clothing damaged while on duty will be replaced on a one-for-one basis.

**ARTICLE 11
LABOR MANAGEMENT COMMITTEE
Employee Involvement Process (EIP)**

Section 11.1 Purpose and Governance of Committee

There shall be an internal Fire Department Labor Management Committee established with five elected executive board members from the IAFF, Local 3924 and five administrative members appointed by the Fire Chief. The purpose of the Committee is to facilitate positive labor-management relationships by providing a forum for the free discussion of mutual concerns and problems. The Fire Labor Management Committee is not an arm of the City Council, nor a public body or committee created by the City Council and shall not report to the City Council.

The Committee will operate from the governing documents and policies in effect as of January 1, 2011. The Committee shall meet at mutually scheduled times.

Executive board members will not be paid for off duty time spent performing labor/management activities, but will be detailed out for such activities.

Section 11.2 Retreat Funds

Funds for the annual EIP labor/management retreat (\$7,380.00 and the awards banquet \$5,000 are in the Fire Department budget). Funds can only be re-allocated by mutual agreement of APFA Local's President and Fire Chief. No other City department will be allowed to use these funds. Expenditure of City funds for these functions shall not exceed \$7,380 for the annual labor management retreat and \$5,000 for the annual award banquet unless approved through the City's budget supplemental request process.

**ARTICLE 12
HUMAN RESOURCES LIAISON**

Section 12.1 Human Resources Liaison

The Human Resources Department will endeavor to train its employees on the unique schedules and compensation variables including the Fair Labor Standards Act as it relates to Firefighters and the Telestaff scheduling system.

As often as is practical or necessary, Human Resources will schedule meetings with the Fire Department Management, the City Manager's Office, and the Local President or his designee to discuss issues unique to the department including issues arising from this Memorandum of Understanding.

**ARTICLE 13
CLARIFICATION**

Section 13.1 Clarification

In the event a dispute over the interpretation of any segment of this MOU arises, as a prelude to filing a formal breach of the MOU, as outlined in Article 14, the Local President and the City Manager or designee will meet with the goal of developing a mutually agreeable clarification. Once agreed upon, the clarification will be signed by both parties and become an informational attachment to the MOU.

**ARTICLE 14
PROCEDURE FOR ALLEGED BREACH OF MOU**

Section 14.1 Procedure

- A. Before initiating the appeal process, a unit member will first discuss and try to resolve the potential appeal matter with the first level non-unit supervisor/manager. An appeal shall specify the article and section of the MOU that is alleged to be violated and the specific remedy that is requested.
- B. If the alleged breach is not resolved within ten (10) days, a written allegation of the alleged breach may be filed with the immediate supervisor, with a copy to the Director of Human Resources. The alleged breach must be timely submitted and contain at a minimum the specific provisions of the MOU that are alleged to have been violated with facts constituting the alleged violation(s) and relief sought.
- C. If after ten (10) days from the date the alleged breach was filed with the immediate supervisor the alleged breach is not resolved, the alleged breach may be filed with the Fire Chief. The Fire Chief or his designee shall schedule a meeting in an attempt to resolve the alleged breach no later than ten (10) days following receipt of the written alleged breach. Each party may bring documents and/or witnesses (at the expense of the Party bringing the

witness to the meeting) in order to present evidence on their behalf. Each party shall have the right to cross-examine the witness brought by the other party.

- D. The Fire Chief or his designee will have ten (10) days to render a decision. If the alleged breach is not resolved with the Fire Chief's decision, the alleged breach will be submitted to the City Manager or his designee.
- E. The City Manager and the President of the local union will jointly request fact-finding or mediation to resolve the alleged breach. The City Manager or designee shall submit a written response within ten (10) days following the receipt of the mediator's decision. The City Manager's decision shall be final. The parties can mutually waive all time frames listed above.
- F. The City and City Manager retain all rights granted by the City Charter and City Code. Nothing in this section of the MOU constitutes a merit system regulation as discussed in the City Charter.

ARTICLE 15 SAVINGS CLAUSE

Section 15.1 Savings

If any provision of this Agreement, or the application of such provision, should be rendered or declared invalid by any court action or by reason of any existing or subsequently enacted legislation, the remaining parts or portions of this Agreement shall remain in full force and effect.

ARTICLE 16 TERM AND EFFECT

Section 16.1 Term

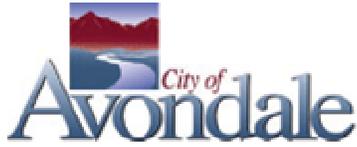
This Memorandum shall become effective 12:01 a.m. July 1, 2012 and remain in full force and effect until midnight June 30, 2014, in accordance with the provisions of the City Code Chapter 2 Article II, unless an intervening financial crisis or other such matter (specifically provided for in this MOU) should occur.

Section 16.2 Conflict

In the event there is a conflict, priority shall be given in the following order: the Ordinance, the Memorandum, the Personnel Rules, and Fire Department Operating Procedures.

Section 16.3 Agreement and Reopener

This Memorandum constitutes the total and entire agreement between the parties and no verbal statement shall supersede any of its provisions. Only by mutual consent of both parties may this agreement be reopened, with the exception of conditions outlined in Article 7 Fiscal Crisis and Article 4, Sections 4.1 Base Rate of Pay and 4.5 Pay Rates.



CITY COUNCIL REPORT

SUBJECT:
Executive Session

MEETING DATE:
February 21, 2012

TO: Mayor and Council
FROM: Andrew McGuire, City Attorney (602) 257-7664
THROUGH: Charlie McClendon, City Manager

PURPOSE:

The Council may hold an executive session pursuant to Ariz. Rev. Stat. § 38-431.03 (A)(1) for discussion regarding the City Judge's annual evaluation.

ATTACHMENTS:

[Click to download](#)

No Attachments Available