Amendment #1 - 12/12/2024 (Added item to the Executive Session)

City of Avondale

City Council Meeting

Monday, December 16, 2024

Mayor and Council

Mike Pineda, Mayor

Curtis Nielson, Vice Mayor

Tina Conde, Councilmember | Jeannette Garcia, Councilmember

Veronica Malone, Councilmember | Gloria Solorio, Councilmember

Max White, Councilmember

Administration

Ron Corbin, City Manager

Tracy Stevens, Assistant City Manager | Katie Gregory, Assistant City Manager

Dale Nannenga, Deputy City Manager | Nicholle Harris, City Attorney

Marcella Sarmiento, City Clerk

City Council Chamber

11465 West Civic Center Drive

Avondale, AZ 85323

Watch a City Council Meeting Online

Visit the link below to watch a City Council meeting live online:
https://www.avondaleaz.new.swagit.com/views/540/

Please note, the live stream will not be monitored by staff; therefore, anyone wishing to address the City Council shall appear in person to speak.

Amendment #1 - 12/12/2024 (Added item to the Executive Session)

City Council Meeting
Notice & Agenda
Monday, December 16, 2024

CITY COUNCIL CHAMBER | 11465 WEST CIVIC CENTER DRIVE | AVONDALE AZ, 85323

A reception to honor Councilmember Veronica Malone and Mayor Kenneth Weise will be held beginning at 5:00 p.m. in the lobby of City Hall. The Avondale City Council will be in attendance at the reception; however, no City business will be conducted.

Request to Speak: Anyone wishing to address the Council regarding items listed on the agenda or under unscheduled public appearance should submit a Request to Speak online at http://www.avondaleaz.gov/requesttospeak prior to consideration of that agenda item.

REGULAR MEETING
5:30 PM

Physical Access to the Council Chambers will be available 30 minutes prior to the meeting.

CALL TO ORDER BY MAYOR
PLEDGE OF ALLEGIANCE & MOMENT OF REFLECTION

1. **ROLL CALL BY THE CITY CLERK**

2. **UNSCHEDULED PUBLIC APPEARANCES** (Time is limited per person. Please state your name.)

3. **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. **MINUTES**
   City Council will consider a request to approve the November 18, 2024 City Council meeting minutes. The Council will take appropriate action.

   b. **AMERICAN RESCUE PLAN ACT (ARPA) MODIFICATION**
   City Council will consider a request to modify the city's American Rescue Plan Act (ARPA) plan as summarized in the attached Exhibit A and facilitate the modification of the city's ARPA plan by authorizing Finance and Budget Department staff to take the steps necessary to execute the necessary budget transfers. The Council will take appropriate action.

   c. **SETTLEMENT AGREEMENT AND PAYMENT FOR THE CLAIM OF DAENG PHONGSAVATH**
   City Council will consider a request to approve the settlement agreement with Daeng Phongsavath in the amount of $110,000 and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

d. **RESOLUTION 1110-1224 - AUTHORIZING GRANT ACCEPTANCE FROM THE ARIZONA INTERNET CRIMES AGAINST CHILDREN TASK FORCE FOR THE PURCHASE OF EQUIPMENT.**

City Council will consider a request to: a) adopt Resolution 1110-1224, authorizing a grant provided by the Arizona Internet Crimes Against Children Task Force in the amount of $800, to purchase equipment which will support the Police Department's investigations related to Internet crimes against children of a sexual nature and authorize and direct staff to take all steps necessary to cause the execution of the Agreement; b) take all the steps necessary to carry out the purpose and intent of this Resolution; and c) authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

e. **RESOLUTION 1111-1224 - AGREEMENT WITH THE STATE OF ARIZONA FOR THE PARTICIPATION IN THE EXCESS PROPERTY (1033) PROGRAM**

City Council will consider a request to adopt Resolution 1111-1224, authorizing an agreement with the State of Arizona to authorize the Avondale Police Department to participate in the Federal Excess Property (1033) Program and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

f. **RESOLUTION 1112-1224 - AUTHORIZING THE EXTENSION OF THE INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF FORESTRY AND FIRE MANAGEMENT FOR THE HEALTHY FOREST INITIATIVE GRANT**

City Council will consider a request to adopt Resolution 1112-1224, approving the extension of the Intergovernmental Agreement with the Arizona Department of Forestry and Fire Management for the Healthy Forest Initiative Grant and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

g. **ORDINANCE 2035-1224 - AUTHORIZING THE SALE AND ISSUANCE OF CITY OF AVONDALE, GENERAL OBLIGATION BONDS, SERIES 2025**

City Council will consider a request to: a) adopt Ordinance 2035-1224, approving the sale, execution, and delivery of General Obligation bonds; approving the form and authorizing the execution and delivery of agreements necessary for such sale; delegating authority to determine certain matters and terms with respect to the foregoing and declaring an emergency; and b) authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

h. **ORDINANCE 2036-1224 - AUTHORIZING THE PURCHASE OF REAL PROPERTY FROM GREAT LAKE FUNDING I TRUST**

City Council will consider a request to adopt Ordinance 2036-1224, authorizing the purchase of property located at 518 E Western Avenue, Avondale, AZ 85323, from Great Lake Funding I Trust in the amount of $1,150,000 and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

4. PRESENTATION ITEMS (DISCUSSION ONLY)

a. **PROCLAMATION - RECOGNITION OF COUNCILMEMBER VERONICA MALONE**

The City Council will recognize Councilmember Veronica Malone for her service as a member of the Avondale City Council from 2017 - 2024 and present a Certificate of Appreciation to Terrance Malone for his unselfish "behind the scenes" service to the City of Avondale. This item is for discussion only.

b. **PROCLAMATION - RECOGNITION OF MAYOR KENNETH WEISE**

The City Council will recognize prior Mayor Kenneth Weise for his service as a member of the Avondale City Council from 2006 - 2024 and present a Certificate of Appreciation to Shari Weise for her unselfish "behind the scenes" service to the City of Avondale. This item is for discussion only.

5. SUMMARY OF CURRENT EVENTS FROM MAYOR, VICE MAYOR, AND COUNCILMEMBERS

(5 minutes)

6. RECESS INTO EXECUTIVE SESSION

City Council will consider a request to recess the Regular Meeting and hold an Executive Session pursuant to Ariz. Rev. Stat. § 38-431.03 (A)(3) and (A)(4), discussion with the City Attorney or attorneys for the City for legal advice and to consider its positions on the Purchase and Sale agreement with Diversified Partners, LLC and to instruct the City Attorney and attorneys for the City on such contract negotiations, contemplated litigation and settlement offers in order to avoid litigation and (ii) Ariz. Rev. Stat. § 38--431.03(A)(1) for discussion of the mid-year performance evaluation and salary of the City Auditor.

Reconvene immediately following the Executive Session

7. REGULAR AGENDA

a. TERMINATION AGREEMENT AND MUTUAL RELEASE WITH DIVERSIFIED PARTNERS, LLC

City Council will consider a request to approve the Termination Agreement and Mutual Release with Diversified Partners, LLC in the amount of $75,000 and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

8. ADJOURNMENT

Councilmembers of the City of Avondale will attend either in person or by telephone or video conference call. 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.

Los miembros del Concejo de la Ciudad de Avondale participaran ya sea en persona o por medio de llamada telefonica o por vídeo. Personas con necesidades especiales de accesibilidad, incluyendo personas con impedimentos de vista u oido, o con necesidad de impresion grande o interprete, deben comunicarse con la Secretaria de la Ciudad at 623-333-1200 o TDD 623-333-0010 cuando menos dos dias habiles antes de la junta del Concejo.

CITY COUNCIL REPORT

ITEM NUMBER: 3.a.

SUBJECT: Minutes

MEETING DATE: 12/16/2024

TO: Mayor and Council

FROM: Marcella Sarmiento, City Clerk

THROUGH: Tracy Stevens, Assistant City Manager, (623) 333-1014

REVIEWED: Ron Corbin, City Manager, (623) 333-1011

STRATEGIC PLAN:
This agenda item supports the following Avondale Strategic Outcome Area: Connected Community - Avondale will work directly and closely with our communities to develop programs and infrastructure that connect residents to the city's resources, the region, and each other. The approval of this agenda item provides residents with access to a previous meeting's minutes. The meeting minutes provide another outlet for residents to connect with the City Council.

PURPOSE:
City Council will consider a request to approve the November 18, 2024 City Council meeting minutes. The Council will take appropriate action.

BACKGROUND:
Pursuant to Arizona Revised Statute § 38-431.01(B), the City must provide written minutes of all City Council meetings.

DISCUSSION:
City Council held a meeting and the attached minutes have been prepared for approval.

BUDGET IMPACT:
This item has no budget impact.

RECOMMENDATION:
Staff recommends City Council approve the November 18, 2024 City Council meeting minutes.

Contact person for document distribution: *Chris Pierson*

MINUTES OF THE AVONDALE CITY COUNCIL
CITY OF AVONDALE, ARIZONA
CITY COUNCIL CHAMBER
November 18, 2024

A **Regular Meeting** of the City Council of the City of Avondale, Arizona was convened at 11465 West Civic Center Drive in open and public session at 5:30 p.m.

Mayor Mike Pineda led the Pledge of Allegiance, followed by a moment of silent reflection.

Members Present: Mayor Mike Pineda; Vice Mayor Curtis Nielson; Councilmembers Tina Conde, Veronica Malone, Jeannette Garcia, Gloria Solorio, and Max White.

*Councilmember Gloria Solorio attended the meeting virtually.

Members Absent: None.

Other Municipal Officials Present: Ron Corbin, City Manager; Tracy Stevens, Assistant City Manager; Katie Gregory, Assistant City Manager; Dale Nannenga, Deputy City Manager; Nicholle Harris, City Attorney; Marcella Sarmiento, City Clerk; Edith Baltierrez, Neighborhood and Family Services Assistant Director; Liz Barker Alvarez, Intergovernmental Affairs Administrator; Kirk Beaty, Public Works Director; Barbara Coppage, City Auditor; Jennifer Stein, Economic Development Services Director; Memo Espinoza, Police Chief; Joel Evans, Facilities Director; Justin Ernst, Assistant Fire Chief; Julie Knoll; Deputy City Clerk; Corey Larriva, Parks and Recreation Director; Ingrid Melle, Communications and Marketing Program Manager; Andy Mesquita, Human Resources Director; Kimberly Moon, Engineering Director; Jodie Novak, Development Services Director; Jeffrey Scheetz, Chief Information Officer; and Renee Weatherless, Finance and Budget Director.

Audience: Approximately 5 members of the public were present.

1. ROLL CALL BY THE CITY CLERK

2. PRESENTATION ITEMS (DISCUSSION ONLY)

a. EMPLOYEE ANNOUNCEMENTS

The following employees were introduced to City Council. This item was for discussion only.

City Manager's Office

- Dillard Collier, Management Analyst

Parks, Recreation and Libraries

- Victor Fregoso, Parks Maintenance Worker (Promotion)
- Natasha Alavi, Librarian III / Branch Manager (Promotion)

b. PROCLAMATION – UNIFIED RESPONDER COMMUNITY MONTH
City Council presented a Proclamation recognizing Unified Responder Community Month. This item was for discussion only.

3. UNSCHEDULED PUBLIC APPEARANCES

None.

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. Councilmembers may pull items from consent if they would like them considered separately.

Mayor Pineda asked if any Councilmember wished to have an item removed from the Consent Agenda. Councilmember White requested agenda item 4c be removed from the Consent Agenda to be considered separately. Motion was made by Councilmember White, seconded by Councilmember Conde, to approve the Consent Agenda with the exception of agenda item 4c.

Upon vote, the motion was carried unanimously 7 to 0.

Councilmember Conde	Aye
Councilmember Malone	Aye
Councilmember Garcia	Aye
Councilmember Solorio	Aye
Councilmember White	Aye
Vice Mayor Nielson	Aye
Mayor Pineda	Aye

a. MINUTES
City Council approved the October 21, 2024 City Council meeting minutes.

b. BOARDS, COMMISSIONS AND COMMITTEES' MEMBER APPOINTMENTS AND REAPPOINTMENTS
City Council approved various Boards, Commissions, and Committees appointments as listed in the staff report and as recommended by the City Council Subcommittee and authorized the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

c. RESOLUTION 1105-1124 - INTERGOVERNMENTAL AGREEMENT WITH VALLEY METRO REGIONAL PUBLIC TRANSPORTATION AUTHORITY FOR TRANSIT INFRASTRUCTURE IMPROVEMENTS
This item was pulled from the consent agenda for further discussion. Item is listed below in more detail.

d. RESOLUTION 1106-1124 - FIRST AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT WITH MARICOPA COUNTY HUMAN SERVICES DEPARTMENT - EXPANSION OF HOMELESS SERVICES

City Council adopted Resolution 1106-1124, approving an amendment to the Intergovernmental Agreement with the Maricopa County Human Services Department for the expansion of homeless services in Avondale and authorized the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents and amendments.

e. RESOLUTION 1107-1124 - INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PHOENIX FOR FEDERAL TRANSIT ADMINISTRATION GRANT PASS-THRU AGREEMENT FOR MICROTRANSIT SERVICES

City Council adopted Resolution 1107-1124, approving an Intergovernmental Agreement between the City of Avondale and the City of Phoenix for a Federal Transit Administration grant pass-thru agreement for microtransit services, and authorized the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

f. RESOLUTION 1108-1124 - SIGNATURE AUTHORITY FOR RISK MANAGER TO SIGN THE INDUSTRIAL COMMISSION OF ARIZONA (ICA) REQUEST FOR WAIVER FROM REQUIREMENT TO POST STATUTORY DEPOSIT FORM

City Council adopted Resolution 1108-1124, authorizing the Risk Manager to sign the Industrial Commission's Request for Waiver from Requirement to Post Statutory Deposit Form on behalf of the City for the annual self-insured Workers' Compensation program renewal and authorized the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

g. ORDINANCE 2031-1124 – GRANTING OF IRRIGATION EASEMENTS TO THE ROOSEVELT IRRIGATION DISTRICT

City Council adopted Ordinance 2031-1124 authorizing the granting of two irrigation easements to the Roosevelt Irrigation District and authorized the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

h. MINOR LAND DIVISION FOR PREMIER UNDERGROUND – PL-24-0181

City Council approved Application PL-24-0181, a request from Daniel Fox of Realty Asset Advisors on behalf of Newman Wong, for approval of a Minor Land Division for Premier Underground located generally north of Riley Drive and east of Eliseo C. Felix Jr. Way, and authorized the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

i. MINOR LAND DIVISION – LOT SPLIT FOR SANTANA LEDESMA – APPLICATION PL-24-0154

City Council approved Application PL-24-0154, a request from Dennis F. Keogh of Keogh Engineering on behalf of Santana Ledesma, for approval of a Minor Land Division – Lot Split for Santana Ledesma located generally south of Lower Buckeye Road and east of 127th Avenue, and authorized the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

j. FINAL PLAT OF STARBUCKS – APPLICATION PL-24-0207
City Council approved Application PL-24-0207, a request from Daniel Cox of SimonCRE JC Acacia V, LLC, on behalf of Nico Howard, for approval of Final Plat of Starbucks located generally north of Lower Buckeye Road and east of Avondale Boulevard, and authorized the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

NOTE FROM THE CITY CLERK: THE FOLLOWING ITEM WAS PULLED FROM THE CONSENT AGENDA TO BE VOTED ON SEPARATELY:

c. RESOLUTION 1105-1124 – INTERGOVERNMENTAL AGREEMENT WITH VALLEY METRO REGIONAL PUBLIC TRANSPORTATION AUTHORITY FOR TRANSIT INFRASTRUCTURE IMPROVEMENTS
City Council considered a request to adopt Resolution 1105-1124, approving an Intergovernmental Agreement between the City of Avondale and Valley Metro Regional Public Transportation Authority for reimbursement of transit shelters and transit center improvements, and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

Kirk Beaty, Director of Public Works, presented information on the funding source and projects related to the Proposition 400 Regional Funding and the bus shelters. Currently, $600,000 remains in the Prop 400 funding and $500,000 of that will be utilized to replace transit shelters on the Valley Metro fixed route. The funds will be used for site evaluation, acquisition of right-of-way, design, and installation. The remaining $100,000 will be to install a security camera on Park Avenue and way finding signs at the Transit Center.

A brief history of the bus shelters and overview of their current condition was provided. The 13 bus shelters that are part of the Valley Metro fixed bus route will be evaluated and repaired based upon usage. The other 9 bus shelters that were previously used for Zoom will eventually be removed as they continue to deteriorate. There are three shelters that were recently installed. The shelter at McDowell and Dysart will be addressed through the CIP process due to the amount of work required.

Mr. Beaty shared images of a standard modern design bus shelter and alternative cost-effective designs for low ridership locations. There are currently no plans to expand the fixed route service or to add a north-south route. Any additional bus stops would be made in cooperation with Valley Metro.

In response to Mayor Pineda’s question, Matthew Dudley, Transit Manager, noted they do not have a formal process for removing stops and explained how they determine where stops are placed.

Councilmembers expressed appreciation for listening to Council and the residents and suggested adding AviWise QR codes at the bus shelters for patrons to quickly report any incidents. Mr. Corbin took the suggestion into consideration and noted they would get back to the Council.

Councilmember White moved to adopt Resolution 1105-1124, approving an Intergovernmental Agreement between the City of Avondale and Valley Metro Regional Public Transportation Authority for reimbursement of transit shelters and transit center improvements, and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents; Councilmember Malone seconded the motion.

Upon vote, the motion was carried unanimously 7 to 0.

Councilmember Conde	Aye
Councilmember Malone	Aye
Councilmember Garcia	Aye
Councilmember Solorio	Aye
Councilmember White	Aye
Vice Mayor Nielson	Aye
Mayor Pineda	Aye

5. REGULAR AGENDA

a. PARKS, RECREATION & LIBRARIES MASTER PLAN UPDATE

Staff provided an update to City Council regarding the City's Parks, Recreation & Libraries Master Plan 2024 Update. This item was for discussion and feedback only.

Corey Larriva, Director of Parks, Recreation, and Libraries introduced Jason Genck, Practice Lead with Berry Dunn and Lisa Paradis, Senior Manager with Berry Dunn two master planning consultants working with the city to update the parks, recreation, and libraries 10-year master plan.

Ms. Paradis provided an overview of the development of the draft plan, including the focus on community engagement. An overview of the key findings included higher quality and newer condition assets, the common resource for information is the city website and social media, and Avondale residents appreciate community engagement events, shade, and pickleball. Following a vision session that utilized data collected strategic initiatives were developed which included these four pillars; Produce outstanding customer experiences, Deliver dynamic services, Provide safe places to play and connect, and Plan for growth and achievement.

An overview of the recommendations for each pillar was provided that included creating and maintaining partnerships, providing safe places to play and connect, and increasing staffing levels. The next step is to obtain feedback from the Council and community by November 25, 2024, create a revised final plan to be adopted at the

December meeting, and conduct implementation workshops to help guide the departments into the future.

In response to Councilmember questions, Ms. Paradis explained the meaning of a “statistically valid survey”. Mr. Larriva explained residents can provided feedback and follow the progress of the master plan on Avondale Connect and social media.

b. PUBLIC HEARING AND ORDINANCE 2032-1124 - ZONING ORDINANCE TEXT AMENDMENTS – CHAPTER 28, ARTICLE 1 (ADMINISTRATION AND PROCEDURES); ARTICLE 2 (RESIDENTIAL DISTRICTS); ARTICLE 7 (SUPPLEMENTARY REGULATIONS); AND ARTICLE 8 (PARKING) - APPLICATION PL-24-0225

City Council held a public hearing and considered a request to adopt Ordinance 2032-1124, amending the Avondale Zoning Ordinance, Chapter 28, Article 1 (Administration and Procedures); Article 2 (Residential Districts); Article 7 (Supplementary Regulations); and Article 8 (Parking), related to accessory dwelling units (ADUs), and authorize the Mayor or City Manager, City Attorney, and City Clerk to execute the necessary documents.

Joshua Orton, Lead Senior Planner, provided an overview of application PL-24-0225 being city-initiated text amendments to the Avondale Zoning Ordinance Chapter 28 for Accessory Dwelling Units (ADUs) to comply with state law. The amendment is due to the passing of HB2720 by Arizona Legislature which standardized the regulation on ADUs throughout the state, specifically requiring communities with more than 75,000 residents to allow the construction of ADUs on any lot that permits a single-family home. Specific updates made within Chapter 28 were noted and reviewed, including parking.

For reference an ADU is a self-contained residential living unit that is on the same lot or parcel as a single-family dwelling of greater square footage than the ADU and provides permanent provisions for living, sleeping, eating, cooking, and sanitation including a separate entrance. The number of ADUs allowed per parcel depends on the circumstances but generally one parcel can have an attached and detached ADU. A larger one acre or more lot can have an additional detached ADU, but it is required to be restricted affordable as defined in the zoning ordinance.

Highlighted conditions for ADUs:

- The maximum square footage is 1,000 or 75% of the gross floor area of the main house, whichever is smaller.
- The minimum side and rear setbacks will be five feet
- The front set back will be the same as the main house
- The height will be the same as the main house or what the zoning district allows, generally 30 feet.

All required public notifications were completed including a digital post on Avondale Connect which generated one comment in support of the amendments. The Planning Commission conducted a public hearing on October 16, 2024, with no public comments or questions. The motion to recommend to City Council passed 4-0.

Mayor Pineda opened the public hearing and did not receive any requests to speak. Mayor Pineda closed the public hearing and opened the floor for comments from Council.

In response to Councilmember questions, Mr. Orton explained that the building height is measured from the ground floor to the peak of the building, which is included in the definitions of the ordinance. The height restriction on ADUs is 30 feet or what the residential zoning district allows, and detached structures are limited to 15 feet. Height of dwelling/ eve / peek avg / what is height. The restricted affordable unit is a deeded restriction which is regulated by the Arizona Neighborhood Family and Services.

Councilmember White moved to adopt Ordinance 2032-1124 amending the Avondale Zoning Ordinance, Chapter 28, Article 1 (Administration and Procedures); Article 2 (Residential Districts); Article 7 (Supplementary Regulations); and Article 8 (Parking), related to accessory dwelling units (ADUs), and authorize the Mayor or City Manager, City Attorney, and City Clerk to execute the necessary documents; Vice Mayor Nielson seconded the motion.

Upon vote, the motion was carried unanimously 7 to 0.

Councilmember Conde	Aye
Councilmember Malone	Aye
Councilmember Garcia	Aye
Councilmember Solorio	Aye
Councilmember White	Aye
Vice Mayor Nielson	Aye
Mayor Pineda	Aye

c. PUBLIC HEARING AND ORDINANCE 2033-1124 - ZONING ORDINANCE TEXT AMENDMENTS – CHAPTER 28, ARTICLE 1 (ADMINISTRATION AND PROCEDURES) - APPLICATION PL-24-0227

City Council held a public hearing and considered a request to adopt Ordinance 2033-1124, amending the Avondale Zoning Ordinance, Chapter 28, Article 1 (Administration and Procedures), to establish residential rezone review and approval timeframes, and authorize the Mayor or City Manager, City Attorney, and City Clerk to execute the necessary documents.

Christina LaVelle, Senior Planner, provided an overview of Application PL-24-0227 a city-initiated text amendment to the Zoning Code for specified timeframes for the review of new residential rezone requests to comply with state law. The amendment is due to the passing of SB1162 by Arizona Legislature which specifies the timeframes for the city to bring residential rezone requests to the City Council for action. The new requirements must be adopted by January 1, 2025

The text amendment adds a timeframe of 30 days for the city to determine a residential rezone application complete and a 180-day timeframe to bring the application to the City Council for action. State law does provide for some exceptions and for the applicant to seek extensions.

All required public notifications were completed including a digital post on Avondale Connect which generated one unrelated comment that asked for future multi-family residential applications to be denied. The Planning Commission conducted a public hearing on October 16, 2024, with no public comments or questions. The motion to recommend to City Council passed 4-0.

Mayor Pineda opened the public hearing and did not receive any requests to speak. Mayor Pineda closed the public hearing and opened the floor for comments from Council.

In response to Councilmember White's question, Mr. Corbin explained there is a request for additional staff, but through a team effort expectations are being met with the current staffing levels.

Councilmember Conde moved to adopt Ordinance 2033-1124 approving amendments to the Zoning Ordinance to establish residential rezone review and approval time frames, and authorize the Mayor or City Manager, City Attorney, and City Clerk to execute the necessary documents; Councilmember Malone seconded the motion.

Upon vote, the motion was carried unanimously 7 to 0.

Councilmember Conde	Aye
Councilmember Malone	Aye
Councilmember Garcia	Aye
Councilmember Solorio	Aye
Councilmember White	Aye
Vice Mayor Nielson	Aye
Mayor Pineda	Aye

6. SUMMARY OF CURRENT EVENTS FROM MAYOR, VICE MAYOR, AND COUNCILMEMBERS

Councilmember White spoke about being a VIP host at the championship race over the weekend. Additionally, she spoke about her experience at the 100th National League of Cities Conference and Summit in Tampa, FL. Further, she ran from the floor for parliamentarian for the National Black Caucus and was elected to the Executive Board.

Councilmember Solorio spoke about her attendance at the 100th National Leage of Cities and her election for a 2-year term on the Woman in Municipal Government Board.

Councilmember Garcia noted the election went smoothly and thanked the City Clerk and her team. She attended the Vet Run at EMCC that honored the veterans in Avondale.

7. ADJOURNMENT

There being no further business before the Council, Councilmember Malone moved to adjourn the Regular Meeting; Councilmember Conde seconded the motion.

Upon vote, the motion was carried unanimously 7 to 0.

Councilmember Conde	Aye
Councilmember Malone	Aye
Councilmember Garcia	Aye
Councilmember Solorio	Aye
Councilmember White	Aye
Vice Mayor Nielson	Aye
Mayor Pineda	Aye

The meeting was adjourned at 7:05 p.m.

____
Mike Pineda, Mayor

CERTIFICATION AND ATTESTATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Meeting of the Council of the City of Avondale held on the 18th day of November 2024. I further certify that the meeting was duly called and held, and that the quorum was present.

____
Marcella Sarmiento, City Clerk

____
Date Approved by City Council

CITY COUNCIL REPORT

ITEM NUMBER: 3.b.

SUBJECT: American Rescue Plan Act (ARPA) Modification

MEETING DATE: 12/16/2024

TO: Mayor and Council

FROM: Renee Weatherless, Finance and Budget Director

THROUGH: Ron Corbin, City Manager, (623) 333-1011

REVIEWED: Ron Corbin, City Manager, (623) 333-1011

STRATEGIC PLAN:
This agenda item supports the following Avondale Strategic Outcome Area:

- Innovative Program and Service Delivery - Avondale will continue to serve as a model of innovative, efficient, and responsive government. This action will help ensure ARPA dollars are used in a timely manner while maintaining compliance with federal rules.

PURPOSE:
City Council will consider a request to modify the city's American Rescue Plan Act (ARPA) plan as summarized in the attached Exhibit A and facilitate the modification of the city's ARPA plan by authorizing Finance and Budget Department staff to take the steps necessary to execute the necessary budget transfers. The Council will take appropriate action.

BACKGROUND:
The American Rescue Plan Act (ARPA) was signed into law on March 11, 2021 to address the on-going impacts of the COVID-19 pandemic. As part of the legislation, $65.1 billion of direct and flexible aid was provided to America's cities and towns. Avondale has used these resources to provide aid to non-profits impacted by the pandemic, enhance outdoor amenities in historically underserved areas, provide scholarships, and fund homeless services. The deadline to obligate ARPA funds is December 31, 2024 and all ARPA funds must be spent by December 31, 2026, including payroll.

DISCUSSION:
The deadline for reporting obligations of ARPA is December 31, 2024. Due to some uncertainties related to the timing and final amount of the DeConcini Park project, it is recommended $350,000 in ARPA allocation be replaced with general fund. The $350,000 in ARPA would be reallocated to homeless services and be expended in fiscal year 2026, which is prior to the December 31, 2026 deadline for expenditures. This reallocation will ensure the City is able to expend its entire ARPA grant allocation.

BUDGET IMPACT:
The proposed ARPA plan changes and necessary budget transfers will allow the city to use these resources in

a timely manner while maintaining compliance with federal rules. There is a $350,000 General Fund impact in FY2025, which will be offset by a $350,000 savings in FY2026.

RECOMMENDATION:
Staff recommends that City Council modify the city's American Rescue Plan Act (ARPA) plan as summarized in the attached Exhibit A and allow staff to make the necessary budget transfers.

Contact person for document distribution: *Robert Baer; Shawn Pierce; Maggie Lam*

Exhibit A - Proposed ARPA Allocation

Project	Department	FY2022 Actuals	FY2023 Actuals	FY2024 Actuals	FY2025 Estimate	Total
Homeless Services	NFS	55,837	467,064	701,682	697,000	1,921,583
Neighborhood Revitalization	NFS/ED	121,135	-	-		121,135
On Demand Technical Assistance Platform/HUUB	ED	245,650	236,914	279,188		761,752
Quarterly Job Fairs for Avondale Businesses (Tourism, Hospitality, a	ED	39,605	39,980	40,000		119,585
Scholarships to attend EMCC/NAU Hospitality Leadership Program	ED	110,000	160,000	160,000		430,000
Contributions Assistance Program	NFS	113,300	200,000	200,000	200,000	713,300
Non-profit expansion	NFS/ED	73,120	44,232	-		117,352
City Events: Billy Moore, Fiesta, and Cycle Avondale Events	PRD	87,414	-	-		87,414
Tourism NASCAR promotion	ED	17,995	-	-		17,995
Destination Marketing Organization (Tourism)- local match	ED	86,487	-	-		86,487
Community Action Program	NFS	118,055	222,538	229,701		570,294
Youth Services	NFS	217,604	(664)	-		216,940
Resource Management Software	IT	13,759	-	-		13,759
Deconcini Park Improvements	PRD	-	-	822,142	842,000	1,664,142
Design Recharge Park	PRD	139,170	191,597	-	86,000	416,767
Mountain View Park Improvements	PRD	-	-	305,162	397,462	702,624
Police Salaries	PD	-	4,000,000	4,000,000		8,000,000
Fire Salaries	Fire	-	1,000,000	1,000,000		2,000,000
		1,439,131	6,561,661	7,737,875	2,222,462	17,961,129
ARPA Allocation			-			17,887,327
Unallocated / (Over Allocated)						(73,802)

CITY COUNCIL REPORT

ITEM NUMBER: 3.c.

SUBJECT: Settlement Agreement and Payment for the Claim of Daeng Phongsavath

MEETING DATE: 12/16/2024

TO: Mayor and Council

FROM: Nicholle Harrris, City Attorney

THROUGH: Ron Corbin, City Manager, (623) 333-1011

REVIEWED: Ron Corbin, City Manager, (623) 333-1011

STRATEGIC PLAN:
N/A

PURPOSE:
City Council will consider a request to approve the settlement agreement with Daeng Phongsavath in the amount of $110,000 and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:
Daeng Phongsavath filed a notice of claim with the City on April 8, 2024.

DISCUSSION:
The City Attorney's Office has negotiated a settlement with Ms. Phongsavath and is recommending approval of the settlement agreement in the amount of $110,000.

BUDGET IMPACT:
The Risk Fund maintains a fund balance to pay claims against the City. With approval of this settlement, the City's balance will remain above our required reserve balance.

RECOMMENDATION:
The staff is recommending City Council approve the settlement agreement with Ms. Phongsavath in the amount of $110,000 and authorize the Mayor, the City Manager, the City Attorney and the City Clerk to execute the necessary documents.

Contact person for document distribution:

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This Settlement Agreement and Release of All Claims ("Agreement and Release") is entered into by Daeng Phongsavath ("PHONGSAVATH") and the City of Avondale ("AVONDALE").

RECITALS

The purpose of this Agreement and Release is to settle and dispose of forever all disputes that PHONGSAVATH may have with the City of Avondale ("AVONDALE") and/or Casandra Kalaysilpin ("KALAYSILPIN") as set forth herein.

A. On or about April 4, 2024, PHONGSAVATH submitted a notice of claim to AVONDALE and KALAYSILPIN (collectively, "DEFENDANTS"), alleging that she was injured on December 21, 2023, during a traffic accident involving City of Avondale employee KALAYSILPIN (the "Claim").

B. PHONGSAVATH and DEFENDANTS have engaged in good faith discussions regarding settling the Claim and have reached an agreement concerning settlement.

C. PHONGSAVATH and DEFENDANTS have agreed to compromise and settle the Claim for the following consideration and pursuant to the following terms.

RELEASE

In consideration of the promises, recitals, covenants, and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and expressly intending to be legally bound hereby, PHONGSAVATH does hereby agree as follows:

1. PHONGSAVATH, individually and on behalf of her heirs, beneficiaries, personal representatives and assigns, as well as by and for any other persons or entities acting on her behalf, does hereby release and forever discharge AVONDALE AND KALAYSILPIN, and AVONDALE'S Mayor and Council past and present, as well as AVONDALE's directors, employees, agents, attorneys, advisors, representatives, departments, agencies, and assigns, as well as any other persons or entities acting on their behalf, and any and all other persons, firms or corporations who are or might be alleged to be liable on their behalf, for any and all claims of any kind or character which PHONGSAVATH has or may have against it or them, from any and all claims, liens, demands, obligations, actions, causes of actions, counts, damages, liabilities, losses, fees, costs or expenses, of any nature whatsoever, whether based on a tort, contract, statutory, administrative or other legal theory of recovery, and whether for compensatory (both general and specific), extra-contractual, punitive (or exemplary), statutory or other form of

damages or legal relief of any nature whatsoever, known or unknown, ascertained or not ascertained, suspected or unsuspected, existing or claimed to exist, relating to this Agreement and Release and/or the Claim.

2. PHONGSAVATH further agrees not to file or pursue any complaint or process against AVONDALE or KALAYSILPIN with any administrative agency, federal, state or local, arising out of, or relating to, this Agreement and Release, or relating in any way to the Claim.

3. PHONGSAVATH voluntarily enters into this Agreement and Release upon the understanding that any dispute between her and DEFENDANTS concerning any and all issues raised in and by the Action shall be finally concluded without any further legal or other action on either side. DEFENDANTS understand that this Agreement and Release is a compromise of disputed claims entered into to avoid the expense and inconvenience of further litigation and does not constitute an admission of liability and further shall not be used by PHONGSAVATH as evidence of, or an admission of, any improper conduct by DEFENDANTS or anyone acting on their behalf.

4. PHONGSAVATH shall indemnify DEFENDANTS and/or hold DEFENDANTS harmless against any loss or liability on account of any claim, demand, obligation or cause of action asserted by PHONGSAVATH or anyone/entity acting on her behalf or at her request, against AVONDALE or KALAYSILPIN. This provision shall be deemed breached, and a cause of action pursuant to this paragraph shall accrue to AVONDALE and KALAYSILPIN, upon the assertion of any such claim, demand, obligation, or cause of action against AVONDALE or KALAYSILPIN by PHONGSAVATH or anyone acting on her behalf or at her direction. If PHONGSAVATH or anyone acting on her behalf or at her direction, files any such claim with an agency or any lawsuit in any Court that is found to be barred in whole or in part by this Agreement and Release, PHONGSAVATH will pay all reasonable legal fees incurred by AVONDALE and KALAYSILPIN in defending against those claims.

5. As consideration for this Release, PHONGSAVATH will receive a check from the City of Avondale in the amount of One Hundred and Ten Thousand Dollars and NO/100 Cents ($110,000.00), payable to: Daeng Phongsavath and Warnock MacKinlay Law, PLLC.

6. PHONGSAVATH warrants and represents that she will satisfy and pay all existing liens, claims, or right of lien any entity or individual may hold against any proceeds, recovery or right of recovery received in settlement from DEFENDANTS arising out of the Claim. PHONGSAVATH specifically agrees to satisfy from the proceeds or otherwise, all liens or subrogated interests she alleges resulted from the Claim. It is understood that PHONGSAVATH will hold harmless, defend and indemnify DEFENDANTS from any and all claims, demands, costs, attorney’s fees and/or other losses which arise from any unpaid liens.

7. PHONGSAVATH understands that pursuant to the Medicare Secondary Payer Act and as a condition of the settlement of the Claim, that PHONGSAVATH must consider and protect the interests of Medicare. PHONGSAVATH understands that all of Medicare's liens, if any, arising from treatment for the subject injuries must be satisfied with the settlement proceeds of this case. PHONGSAVATH agrees to indemnify and hold harmless DEFENDANTS from any and all actions, claims, liens, or demands of any nature that are filed or will be filed in connection with Medicare's liens. In case any suit or other proceeding shall be brought on account of Medicare's liens, PHONGSAVATH agrees to pay all reasonable attorney fees, penalties, and judgments that may be incurred by or claimed against AVONDALE and KALAYSILPIN.

8. PHONGSAVATH hereby acknowledges and accepts the above-described consideration as full payment for this Agreement and Release and further acknowledges that such consideration is adequate and sufficient consideration for the Release. Said payment is made in return for a full and complete release of all actions or claims against DEFENDANTS arising out of the Claim.

9. As part of the consideration given to PHONGSAVATH for this Agreement and Release, she expressly warrants and represents to DEFENDANTS that she is legally competent to execute this Agreement and Release, and that she has not assigned, pledged or otherwise sold or transferred in any manner whatsoever, either by instrument, in writing or otherwise, any right, title, interest or claim she has or may have had against DEFENDANTS arising in any way from her Claim.

10. The payment of the sum specified in paragraph 5, above, is for a full and complete settlement and release of the Claim. **NO FURTHER SUMS OR OTHER CONSIDERATION ARE DUE TO BE PAID TO PHONGSAVATH BY DEFENDANTS FOR THIS SETTLEMENT.**

11. PHONGSAVATH understands and agrees that the settlement terms described herein are fair and equitable under all circumstances and regards the settlement proceeds as full consideration of the final settlement of all claims, rights, and damages which PHONGSAVATH has or may have against DEFENDANTS arising out of the actions complained of in the Claim.

12. This Agreement and Release, or any portion thereof, may not be amended, modified, or any right or condition hereunder waived, except by written instrument signed by PHONGSAVATH and AVONDALE.

13. For purposes of interpretation of this Agreement and Release, this Agreement and Release shall be deemed to have been drafted equally by both parties. The usual rule that the provisions of the document are to be construed and interpreted against the drafter does not apply to the interpretation of the provisions herein. Further, the terms and

conditions of this Agreement and Release shall be interpreted and enforced according to Arizona law.

14. This Agreement and Release and all of its terms shall inure to the benefit of and shall bind the successors, assigns, representatives, beneficiaries, and next of kin of PHONGSAVATH, and each of them.

15. To the extent any portion of this Agreement and Release shall be judicially determined to be invalid or unenforceable, the same shall, to that extent, be deemed severable from this Agreement and Release and the invalidity or unenforceability thereof shall not affect the validity and enforceability of the remaining portion of this Release.

16. This Agreement and Release contains the entire agreement between the parties relating to the transactions contemplated hereby. This Agreement and Release supersedes all prior discussions, negotiations, representations, and agreements, oral or written, of the parties concerning the subject matter hereof, and all such prior discussions, negotiations, representations, and agreements, oral or written, are of no further force or effect. PHONGSAVATH acknowledges and declares that this Agreement and Release is entered into in good faith, for no collusive purpose, and the terms hereof are contractual and not mere recitals.

17. All representations and agreements set forth herein shall be deemed continuing and shall survive the effective date of this Agreement and Release.

18. PHONGSAVATH agrees to execute such other documents and to take such other actions as may reasonably be necessary to further the purpose of this Agreement and Release.

[SIGNATURES ON FOLLOWING PAGE]

DAENG PHONGSAVATH HAS READ THE ABOVE SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS BEFORE SIGNING IT AND FULLY UNDERSTANDS THE TERMS.

Dated: __________________________ ______________________________________

DAENG PHONGSAVATH

CITY OF AVONDALE, ARIZONA, an Arizona charter municipal corporation

Dated: __________________________ ______________________________________

Nicholle Harris, City Attorney

CITY COUNCIL REPORT

ITEM NUMBER:	3.d.
SUBJECT:	Resolution 1110-1224 - Authorizing Grant Acceptance from the Arizona Internet Crimes Against Children Task Force for the purchase of equipment.
MEETING DATE:	12/16/2024
TO:	Mayor and Council
FROM:	Renee Weatherless, Finance and Budget Director
THROUGH:	Ron Corbin, City Manager, (623) 333-1011
REVIEWED:	Ron Corbin, City Manager, (623) 333-1011

STRATEGIC PLAN:

This agenda item supports the following Avondale Strategic Outcome Area:

Public Health and Safety - Avondale is a city where all people feel safe and secure, relying on trusted public and community-based resources.

The funding provides resources to support investigations and prosecutions related to Internet crimes of a sexual nature against children.

PURPOSE:

City Council will consider a request to: a) adopt Resolution 1110-1224, authorizing a grant provided by the Arizona Internet Crimes Against Children Task Force in the amount of $800, to purchase equipment which will support the Police Department's investigations related to Internet crimes against children of a sexual nature and authorize and direct staff to take all steps necessary to cause the execution of the Agreement; b) take all the steps necessary to carry out the purpose and intent of this Resolution; and c) authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

The Arizona Internet Crimes Against Children (AZICAC) Task Force provides funding to affiliate local governments to support costs related to training, investigations, computer forensics, and public awareness of Task Force work. The Task Force's mission is to apprehend and bring to justice Internet sexual predators and Internet child pornographers. The Avondale Police Department is one of 55 agencies affiliated with the Task Force. The City of Avondale Police Department will utilize the awarded funds to purchase external data storage for use during investigations.

DISCUSSION:

Funding will be utilized to purchase external data storage used during investigations. The Agreement will begin on November 21, 2024, and will terminate on January 31, 2025.

BUDGET IMPACT:
The acceptance of this grant will require a transfer of appropriation from the unanticipated revenue line item.

RECOMMENDATION:
Staff recommends City Council adopt a resolution authorizing the acceptance of a grant from the Arizona Internet Crimes Against Children Task Force in the amount of $800 and authorize staff to take the necessary action to execute the terms of the agreement.

Contact person for document distribution: *Shawn Pierce, Daniel Vasquez*

RESOLUTION NO. 1110-1224

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING THE ACCEPTANCE OF A GRANT FOR TRAINING AND EQUIPMENT FOR THE INTERNET CRIMES AGAINST CHILDREN TASK FORCE.

WHEREAS, the City of Phoenix Police Department ("Phoenix") has awarded the City of Avondale Police Department ("Avondale") up to $800.00 to be used for training and equipment related to the Internet Crimes Against Children Task Force (the "Grant");

WHEREAS, the City of Avondale wishes to accept the Grant funds.

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 conditions of the Grant are hereby approved in substantially the form and substance of the Grant award letter attached hereto as Exhibit A and incorporated herein by reference.

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

PASSED, AND ADOPTED by the City Council of the City of Avondale, Arizona, December 16, 2024.

____
Mike Pineda, Mayor

ATTEST:

____
Marcella Sarmiento, City Clerk

APPROVED AS TO FORM:

____
Nicholle Harris, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 1110-1224

[Grant Award Letter and Conditions]

See following page.

City of Phoenix

November 21, 2024

Chief Cuauhtemoc Espinoza
Avondale Police Department
11485 West Civic Center Drive
Avondale, AZ 85323

Dear Chief Cuauhtemoc Espinoza:

Upon reviewing the Affiliate Award Funding Request received by your agency, your agency is being awarded $800.00 to be utilized for training and/or equipment related to Internet Crimes Against Children (ICAC) investigations. The awarded funding needs to be spent, and reimbursement requests submitted to the AZICAC Task Force, by January 31, 2025. This funding is derived from an intergovernmental agreement between the Arizona Attorney General's Office and the City of Phoenix. As such, this is not federally-derived funding and is not associated with a Catalog of Federal Domestic Assistance (CFDA) number.

Below are some important guidelines regarding this funding:

1. Affiliate award funds must be used for directly-related costs, such as training, investigations, computer forensics, and public awareness in connection with ICAC;
2. Minor deviations from your Affiliate Award Funding Request are permissible if the final purchases are related to the ICAC requirements stated in Item #1;
3. This is a reimbursement program. As such, your agency must first purchase the equipment or training and then submit documentation to Phoenix Police Department AZICAC Task Force Administrator Katie Kobus via email at katherine.kobus@phoenix.gov;
4. In order to be eligible for reimbursement, all ICAC-related travel and training must be conducted in accordance with the State of Arizona Travel Policy and reimbursement rates listed in the State of Arizona Accounting Manual;
5. Monthly progress reports for your agency's activities related to ICAC investigations, training, and public awareness are REQUIRED and must be entered by your agency into the ICAC Data System website at www.icacdatasystem.com no later than the 10th day of the following month.

Sincerely,

MICHAEL G. SULLIVAN
Interim Police Chief

Nicholas Jimenez 6957 Acting Bureau Commander

AMY BREITZMAN
Commander
Family Investigations Bureau

CITY COUNCIL REPORT

ITEM NUMBER:	3.e.

SUBJECT: Resolution 1111-1224 - Agreement with the State of Arizona for the Participation in the Excess Property (1033) Program

MEETING DATE: 12/16/2024

TO: Mayor and Council

FROM: Memo Espinoza, Chief of Police

THROUGH: Dale Nannenga, Deputy City Manager, (623) 333-1017

REVIEWED: Ron Corbin, City Manager, (623) 333-1011

STRATEGIC PLAN:
This agenda item supports the following Avondale Strategic Outcome Area:

- Public Health and Safety – Avondale is a city where all people feel safe and secure, relying on trusted public and community-based resources.

PURPOSE:
City Council will consider a request to adopt Resolution 1111-1224, authorizing an agreement with the State of Arizona to authorize the Avondale Police Department to participate in the Federal Excess Property (1033) Program and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:
In 1997, the National Defense Authorization Act (1033 program) was passed which authorized the Department of Defense to transfer excess military property to state and local police agencies at no cost. Arizona law enforcement agencies who participate in the program do so through the Arizona Public Safety Procurement Program.

Agencies who participate in the program can use two methods of screening excess property. The first is by physically visiting a Defense Reutilization and Marketing Office (DRMO) or by accessing a website of inventory listings. The condition of the equipment varies, and all property must be used for law enforcement purposes; however, the equipment is obtained free of charge. Participating agencies must plan for the equipment to be picked up or pay for shipping. Some of the equipment that is available includes vehicles, ATV's, weapons, computer equipment, fingerprint supplies and photographic equipment.

DISCUSSION:
The State Plan of Operation allows for the transfer of excessive Department of Defense supplies and equipment to local and state law enforcement at no cost. The program does have six (6) restrictions. They include:

- The requesting agency must be a government agency with the primary function of enforcing laws with officers who have the power of arrest and apprehension.
- The property must come from existing Department of Defense inventories.
- The receiving agency is responsible for all costs associated with the equipment after transfer.
- The agency must accept the property "as-is" and "where-is".
- All property is transferred on a first-come first-served basis.
- The property cannot be sold, exchanged, bartered, or used to supplement the agency's budget.

The program will be administered and monitored by the Patrol Support Services Bureau. The equipment acquired will be related directly to the operation of the Police Department. If equipment is found that meets the needs of the department; however, because of high transportation or shipping costs, the equipment will simply not be acquired. The shipping, transportation, and maintenance cost for each item will be closely monitored before bringing any new item into the department inventory. The closest DRMO locations for staff to view property are the Tucson or Yuma locations.

BUDGET IMPACT:
The City is responsible for the annual membership fee of $1,000 and transportation or shipping costs for acquiring equipment or supplies under this agreement. Costs will be considered prior to acquiring any equipment or supplies and will be covered within the department’s existing budget.

RECOMMENDATION:
Staff requests Council authorize the agreement with the State of Arizona in order for equipment or supplies be transferred to the police department and authorize the Mayor, or City Manager, City Attorney, and City Clerk to execute the necessary documents.

Contact person for document distribution: *Albert Bates*

RESOLUTION NO. 1111-1224

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING THE STATE PLAN OF OPERATION WITH THE STATE OF ARIZONA RELATING TO LAW ENFORCEMENT USE OF FEDERAL EXCESS PROPERTY.

WHEREAS, pursuant to 10 United States Code § 2576 the United States Department of Defense (DoD) established the Law Enforcement Support Office (LESO) program, also known as the Excess Property 1033 Program, to distribute excess DoD property to Federal and State law enforcement agencies for use in law enforcement activities at no cost to the law enforcement agency; and

WHEREAS, on August 17, 2023, the Governor of Arizona appointed a State Coordinator to implement, manage and oversee the State of Arizona LESO Program, which is a division of the Arizona Public Safety Procurement Program (AZPSPP); and

WHEREAS, on June 20, 2024, the Arizona State Plan of Operation was approved by the by the Arizona State Coordinator, and

WHEREAS, the Arizona State Plan of Operation is an agreement between the State of Arizona and the local law enforcement agency outlining the terms and conditions with respect to the transfer and use of DoD excess property conditionally transferred to the local law enforcement agency for law enforcement activities; and

WHEREAS, the Arizona State Plan of Operation requires the law enforcement agency to certify on an annual basis that it has adopted specific protocols related to the use, supervision, and evaluation of the DoD excess property transferred to the law enforcement agency; and

WHEREAS, the City of Avondale Police Department has participated in the DoD LESO program in prior years and wishes to continue participation in the program pursuant to the updated June 20, 2024, Arizona State Plan of Operation.

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

SECTION 1. The Arizona State Plan of Operation for the use of federal excess property by law enforcement (the "Agreement") is hereby approved in the form attached hereto as Exhibit A.

SECTION 2. The Mayor, the City Manager or his designee, the City Clerk and the City Attorney are hereby authorized and directed to take all steps necessary 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, Arizona December 16, 2024.

Mike Pineda, Mayor

ATTEST:

Marcella Sarmiento, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 1111-1224

(Agreement)

See following pages.

State Plan of Operation (SPO) between:

The State of Arizona **and the**

(State/United States Territory)

City of Avondale (Police Department)

Law Enforcement Agency (LEA)

1) PURPOSE This State Plan of Operation (SPO) is entered into between the State/United States (U.S.) Territory and Law Enforcement Agency (as identified above), to set forth the terms and conditions which will be binding on the parties with respect to Department of Defense (DoD) excess personal property conditionally transferred pursuant to 10 USC § 2576a, in order to promote the efficient, expeditious transfer of property and to ensure accountability of the same.

2) AUTHORITY The Secretary of Defense (SECDEF) is authorized by 10 USC § 2576a to transfer to Federal and State Law Enforcement Agencies (LEAs), personal property that is excess to the needs of the DoD, including small arms and ammunition, that the Secretary determines is suitable to be used by such agencies in law enforcement activities, with preferences for counter-drug/counter-terrorism, disaster-related emergency preparedness or border security activities, under such terms prescribed by the Secretary. The SECDEF has delegated program management authority to the DLA. The DLA Disp Svcs LESO administers the program in accordance with (IAW) 10 USC § 2576a, 10 USC § 280, DoDM 4160.21 and DLAI 4140.11. The DLA defines "law enforcement activities" as activities performed by governmental agencies whose primary function is the enforcement of applicable federal, State, and local laws and whose compensated law enforcement officers have powers of arrest and apprehension.

A. Operational Authority

a. The Governor of the State of Arizona has appointed Matt Van Camp as the State Coordinator in writing with an effective date of August 17th 2023 to implement this program statewide as well as conduct management and oversight of this program. The Tonto Apache Tribal Police Department provides funding / budgeting to administer this program. The LESO program is a division of the Arizona Public Safety Procurement Program or the AZPSPP.

B. Membership Fee

a. The AZPSPP may institute a membership fee to cover administrative costs associated with managing the LESO program. The AZPSPP uses a budget year of July 1st thru June 30th as it's yearly cycle. Membership fees are due after July 1st of the current year. The AZPSPP currently has a $500.00 per year membership fee for each participating agency that has 49 or less sworn personnel and a $1000.00 membership fee for participating agencies that have 50 or more sworn personnel. Membership fees can be paid by check or credit card to the Tonto Apache Tribal Police Department LESO Program by Mail at 30 Tonto Apache Reservation Payson, AZ 85541, or by phone to 928-474-5000 ext 8153.

b. The provided funding is used to support the mandates in this plan for Program Compliance Reviews (PCR'S), training, computer hardware and software, travel and customer service. This includes computer / telephone assistance and physical visits to the LEA for training.

3) GENERAL TERMS AND CONDITIONS "DoD excess personal property" also known as "items", "equipment", "program property", or "property". "DLA Disposition Services Law Enforcement Support Office" also known as "1033 Program", "LESO Program", "the program", or "LESO". "State or U.S. Territory" also known as "the State", "State Coordinator (SC)", "State Point of Contact (SPOC)", or "SC/SPOC". "Law Enforcement Activities" also known as "agencies in law enforcement activities", "Law Enforcement Agency (LEA)", "program participant", or "State/LEA".

a) Property made available under this agreement is not for personal use and is for the use of authorized program participants only. All requests for property shall be based on bona fide law enforcement requirements. Authorized participants who receive property from the program will not loan, donate, or otherwise provide property to other groups or entities (i.e., public works, county garage, schools, etc.) that are not otherwise authorized to participate in the program. Property will not be obtained by program participants for the purpose of sale, lease, loan, personal use, rent, exchange, barter, transfer, or to secure a loan. To receive such property, on an annual basis the LEA shall certify that they have:

i) Obtained authorization of the relevant local governing body authority (i.e., city council, mayor, etc.).

ii) Adopted publicly available protocols for the appropriate use of controlled property, the supervision, and the evaluation of the effectiveness of such use, including auditing and accountability policies.

iii) Annual training in place and provides it to relevant personnel on the maintenance, sustainment, and appropriate use of controlled property, including respect for the rights of citizens under the Constitution of the U.S. and de-escalation of force.

b) All costs associated with the transportation, turn-in, transfer, repair, maintenance, insurance, disposal, repossession or other expenses related to property are the sole responsibility of the State/LEA. The State/LEA shall also be responsible to reimburse the U.S Government (USG) for costs incurred in retrieving and/or repossessing property impermissibly transferred by the State/LEA to unauthorized participants.

c) The State/LEA will maintain and enforce regulations designed to impose adequate security and accountability measures for controlled property to mitigate the risk of loss or theft of property. Program participants shall implement controls to ensure property made available under this agreement is used for official law enforcement use only. The State/LEA shall take appropriate administrative and/or disciplinary action against individuals that violate provisions of the Memorandum of Agreement (MOA) between the Federal Government and the State/U.S. Territory and/or this SPO, including unauthorized use of property.

d) All property transferred to the State/LEA via the program is on an as-is, where-is basis.

e) LESO reserves the right to recall property issued to a State/LEA at any time.

f) General use of definitions/terms:

i) Demilitarization (DEMIL code)-a code assigned to DoD property that indicates the degree of required physical destruction, identifies items requiring specialized capabilities or procedures, and identifies items which do not require DEMIL but may require Trade Security Controls (TSC). Program participants are not authorized to conduct physical demilitarization of property.

ii) “Controlled property”-items with a DEMIL code of B, C, D, E, F, G, and Q (with an Integrity Code of “3”. Title and ownership of controlled property remains with the DoD in perpetuity and will not be relinquished to the State/LEA. When a State/LEA no longer has a legitimate law enforcement use for controlled property, they shall notify the LESO and the property will be transferred to another program participating State/LEA (via standard transfer process) or returned to DLA Disp Svcs for disposition.

iii) “Non-controlled" property”-items with a DEMIL code of A or Q (with an Integrity Code of “6”). These items are conditionally transferred to the State/LEA and will remain on State/LEA accountable inventory for one year from the ship date. However, after one year from the ship date, DLA will relinquish ownership and title for the property to the State/LEA without issuance of further documentation. During this one year period, the State/LEA remains responsible for the accountability and physical control of the property and the LESO retains the right to recall the property. Participants should return any property in this one year period that becomes excess to their needs or they otherwise determine is not serviceable.

(1) The LEA receives title and ownership of DEMIL “A” and “Q6” property as governmental entities. Title and ownership of this property does not pass from DoD to any private individual or State/LEA official in their private capacity. Such property shall be maintained and ultimately

disposed of IAW provisions in State and local laws that govern public property.

(2) Sales/gifting of DEMIL“A” and “Q6” property after one year from the ship date inconsistent with State/local law may constitute grounds to deny future participation in the program. If the LEA’s policy allows for disposal of DEMIL “A” and “Q6” property by sale or auction, all funds generated by the sale of DoD acquired property will be restricted for the LEA’s use only. It cannot be transferred to the General Fund of the LEA’s parent Governing body’s budget. DoD acquired property will be fully utilized or offered to another program participant by the LEA prior to disposal. DoD property will not be acquired to supplement the LEA’s budget.

(3) After one year from ship date, DEMIL “A” and “Q6” property may be transferred, cannibalized for usable parts, sold, donated, or scrapped. All usable/repairable DEMIL “A” and “Q6” property that was obtained from the LESO program will be offered to other State, Local or Federal participants of the LESO program through the State Coordinators Office prior to being disposed of per agency policy. A Photo and description of the item shall be emailed to the State Coordinators Office for dissemination to all Arizona participants of the program. After 15 days of being offered to other program participants, the LEA may follow their agencies policy for disposal.

(4) Once the property is no longer on the LEA accountable inventory, the property is no longer subject to the annual physical inventory requirements and will not be inventoried during a LESO Program Compliance Review (PCR).

g) All physical transfers of property require LESO approval. Program participants will not physically transfer property until the LESO approval process is complete. Program participants may request their SC/SPOC approval to temporarily conditionally loan property to another program participant (if mission requires). If the SC/SPOC approves the temporary conditional loan, it shall be done using an acceptable Equipment Custody Receipt (ECR). At the end of the temporary conditional loan, the item (s) shall be returned to the original LEA for accountability. All requests for conditional loans will be based on bona fide law enforcement requirements.

h) The program may authorize digital signatures on required program documentation.

i) The State/LEA is not required to maintain insurance on controlled property, aircraft or other property with special handling requirements that remain titled to DoD. However, the State/LEA will be advised that if they elect to carry insurance and the insured property is on the program inventory at the time of loss or damage, the recipient will submit a check made payable to DLA for insurance proceeds received in excess of their actual costs of acquiring and rehabilitating the property prior to its loss, damage, or destruction.

4) STATE PLAN OF OPERATION The State shall:

a) Assist in training LEAs with enrollment, property requests, transfers, turn-ins, and disposal procedures.

b) Adhere to the requirements outlined in the MOA between the Federal Government and the State/U.S. Territory and ensure MOA amendments or modifications are incorporated into this SPO and program participants are notified and acknowledge responsibility to comply with changes.

c) Submit a SPO to LESO that shall address procedures for determining LEA eligibility, allocation, equitable distribution of property, accountability, inventory, training, and education, State-level internal PCRs, export control requirements, procedures for turn-in, transfer, and disposal and other responsibilities concerning property.

d) Enter into written agreement with each LEA, via the LESO-approved SPO, to ensure program participants acknowledge the terms, conditions, and limitations applicable to property. This SPO must be signed by the current Chief Law Enforcement Official (CLEO) (or designee) and the current SC/SPOC.

e) Provide program participants the following information:

i) The LESO Program State POCs:

State Coordinator (SC): _Matt Van Camp_Tonto Apache Police Department_928-595-4020______

State Point of Contact (SPOC): _Pepper Van Camp azleso1122@gmail.com   480-939-0027 ___

State Point of Contact (SPOC): Don McWilliams   dmcwilliams@Buckeyeaz.gov 623-271-1959

State Point of Contact (SPOC):

ii) SC/SPOC Facility Information:

Physical Mailing Address: _____30 Tonto Apache Reservation Payson, AZ 85541_____________

Email:________________azleso1122@gmail.com___________________________________

Phone Number: _CELL 928-595-4020 / 928-978-0010 Office 928-468-1050__________________

Website: ____

Hours of Operation: _Monday thru Friday 8:00 AM to 5:00PM Hours could vary based on work assignments.

iii) Funding to administer the LESO Program at the State-level is provided via:

__Tonto Apache Tribal Police Department____

___30 Tonto Apache Reservation Payson, AZ 85541____

5) PROPERTY ACCOUNTING SYSTEM The State will maintain access to Federal Excess Property Management Information System (FEPMIS) (or current property accounting system), to ensure LEAs maintain property books, to include, but not limited to, transfers, turn-ins, and disposal requests from an LEA or to generate these requests at the State-level and forward all approvals to the LESO for action. The State will:

a) Conduct quarterly reconciliations of State property records.

b) Ensure at least one person per LEA maintains access to the property accounting system. Users may be "active" or "inactive" in the system, so long as they are registered. Ensure registered users are employees of the State/LEA.

c) Ensure LEAs receive and account for property in the property accounting system within 30 days.

6) LESO WEBSITE The State shall access the LESO website for timely and accurate guidance, information, and links concerning the program and ensure that all relevant information is passed to the program participants.

7) ANNUAL TRAINING 10 USC § 280 provides that the SECDEF, in cooperation with the U.S. Attorney General, shall conduct an annual briefing of law enforcement personnel of each State (including law enforcement personnel of the political subdivisions of each State). Individuals who wish to attend are responsible for funding their own travel expenses. The briefing will include information on training, technical support, equipment, and facilities that are available to civilian law enforcement personnel from the DoD. The state shall provide program participants training material as discussed during the annual LESO training which includes information on property management best practices to include (but not limited to) searching for property, accounting for property on inventory, transfer and turn-in of property when it is no longer needed or serviceable.

8) ENROLLMENT The LESO shall establish and implement program eligibility criteria IAW 10 USC § 2576a, DLA Instructions and Manuals and this SPO and retains final approval/disapproval authority for application packages forwarded by the State. Non-governmental law enforcement entities such as private railroad police, private security, private academies, correctional departments, prisons, or security police at private schools/colleges are not eligible to participate. Fire departments (by definition) are not eligible to participate and should be referred to the DLA Fire Fighter program administered by USDA. Law enforcement agencies requesting program participation shall have at least one full-time law enforcement officer. Program property may only be issued to full-time/part-time law enforcement officers. Non-compensated reserve officers are not authorized to receive property. State law enforcement training facilities/ academies may be authorized to participate in the program given their primary function is the training of bona fide State/local law enforcement officers. Law enforcement training facilities/academies will be reviewed on a case-by-case basis. The State shall:

a) Validate the authenticity of state/LEAs that are applying for program participation. Only submit to the LESO those application packages that the SC/SPOC recommends/certifies are government agencies whose primary function is the enforcement of applicable federal, State, and local laws and whose compensated officers have the powers of arrest and apprehension. If the State forwards an unauthorized participant application package, this may result in a formal suspension of the State.

b) Have sole discretion to disapprove state/LEA application packages in their State. The SC/SPOC should provide notification to the LESO when application packages are disapproved at the State-level.

c) Ensure that screeners listed in the application package are employees of the LEA. A screener may only screen property for two LEAs. Contractors may not conduct screening on behalf of a LEA.

d) Make recommendation on what constitutes a “full-time” or “part-time” law enforcement officer.

e) Ensure LEAs update their account information annually, or as needed. This may require the LEA to submit an updated application package. An updated application package shall be submitted for (but is not limited to) the following: a change in CLEO, the addition or removal of a screener, a change in the LEA physical address or contact information, etc.

f) Provide the LEA a comprehensive program overview once approved by the LESO for enrollment. The overview will be done within 90-days of a LEA being approved to participate.

9) PROPERTY ALLOCATION

a) <u>The LESO shall:</u>

i) Upon receipt of a SC/SPOC validated request for property through the RTD website, will review and give preference to requisitions indicating that the requested property will be used in the counter-drug, counter-terrorism, disaster-related emergency preparedness, or border security activities of the requesting LEA. Program participants that request vehicles used for disaster-related emergency preparedness, such as high-water rescue vehicles, should receive the highest preference.

ii) Require additional justification for small arms, aircraft, ammunition, and vehicles and to the greatest extent possible, ensure fair and equitable distribution of property based on current LEA inventory and justification for property.

iii) Reserve the right to determine and/or adjust allocation limits, to include the type, quantity and location of property allocated to the State/LEA. Generally, no more than one item (per part-time/full-time officer) will be allocated. Quantity exceptions may be granted by the LESO on a case-by-case basis based on the justification provided by the LEA. Currently, the following allocation limits apply:

(1) Robots: one (of each type) for every ten officers (full-time/part-time).

(2) High Mobility Multipurpose Wheeled Vehicle (HMMWV)/Up-Armored HMMWV (UAH): one vehicle for every three officers (full-time/part-time).

(3) Mine Resistant Ambush Protected (MRAP) / Armored Vehicles: two vehicles per LEA.

(4) Small arms: one (of each type) per officer (full-time/part-time).

(a) LESO may authorize over allocations of small arms in preparation for inevitable scenarios, i.e. training, equipment downtime (damage, routine maintenance, inspections) or other law enforcement needs. The chart below is the standard for small arms acceptable over-allocations:

Small Arms Acceptable Over-Allocations	
# of Officers	**# by type**
1-10	2 or less
11-25	3 or less
26-100	5 or less
101-299	8 or less
300 or more	10 or less

(b) In instances where small arm allocation amounts exceed the “acceptable over-allocation” levels, the LESO will coordinate with States to verify accuracy of the officer count. If small arm allocation is still beyond acceptable levels, LESO may authorize one of the following: 1) an exception to policy, 2) a transfer, or 3) a turn-in.

b) <u>The State shall:</u>

i) Assist the LEA in the use of electronic screening of property via the RTD website and shall access the RTD website a minimum of once daily (Monday-Friday) to review and process LEA requests for property. Property justifications shall be validated to ensure they meet the intent of 10 USC § 2576a as suitable for use by agencies in law enforcement activities. Prior to approving a request or transfer, review the LEAs property allocation report to prevent over allocation.

ii) Upon receipt of a valid LEA request for property, provide a recommendation to the LESO on the preference to be given to those requisitions for property that will be used in counter-drug, counter-terrorism, disaster-related emergency preparedness or border security activities of the recipient agency. Requests for vehicles used for disaster-related emergency preparedness, such as high-water rescue vehicles, should receive the highest preference. The State shall consider the fair and equitable distribution of property based on current LEA inventory and LEA justifications for property. The State shall ensure the type and quantity of property being requested by LEAs is reasonable and justifiable given the number of officers (full-time/part-time) and prior requisitions for similar items they have received (both controlled and non-controlled property). Generally, no more than one of any item per officer (full-time/part-time) will be allocated.

10) PROPERTY MANAGEMENT Certain controlled equipment shall have a documented chain of custody (i.e. an acceptable ECR), including a signature of the recipient. Controlled property requiring an ECR: small arms (including parts and accessories), aircraft, vehicles, optics, and robots. It is encouraged to utilize ECRs for all controlled property. LEAs may request cannibalization on aircraft or vehicles. Cannibalization requests shall be submitted to the State for review. Cannibalization must be approved by the LESO prior to any cannibalization actions. The cannibalized end item shall be returned to DLA Disp Svcs within the timeframes determined by the LESO.

a) Aircraft-Aircraft will not be obtained by LEAs for the purpose of sale, lease, loan, personal use, rent, exchange, barter, transfer, or to secure a loan and shall be reported to the LESO at the end of their useful life. All aircraft are considered controlled property, regardless of DEMIL code. Aircraft that are no longer needed or serviceable shall be reported to the General Services Administration (GSA) for final disposition by the LESO Program Aircraft Specialist.

b) Vehicles-Program participants that request vehicles used for disaster-related emergency preparedness, such as high-water rescue vehicles, should receive the highest preference. Vehicles will not be obtained by LEAs for the purpose of sale, lease, loan, personal use, rent, exchange, barter, transfer, or to secure a loan and vehicles that are considered controlled property will be returned to DLA Disp Svcs at the end of their useful life. DLA Disp Svcs Field Activity/Site will identify qualifying DEMIL A or Q6 vehicles and may issue (upon LEA request) a Standard Form (SF) SF-97 to the LEA upon physical transfer of the vehicle. The LEA may modify the vehicle during the one year conditional transfer period.

c) Ammunition-LESO will support the U.S. Army (USA), in allocating ammunition to program participants. Ammunition obtained via the program will be for training use only. At the time of request, the LEA will certify in writing that the ammunition will be used for training use/purposes only. The USA will issue approved transfers directly to the State/LEA. The State/LEA is responsible for funding all packing, crating, handling, and shipping costs for ammunition. The LEA will make reimbursements directly to the USA. Ammunition will not be obtained by LEAs for the purpose of sale, lease, loan, personal use, rent, exchange, barter, transfer, or to secure a loan. Ammunition obtained via the program shall not be sold. Ammunition will be treated as a consumable item and not tracked in any DLA inventory system or inspected during PCRs. LESO shall track and maintain necessary records of ammunition that has been transferred to LEAs and will post all requests, approvals, and denials on the LESO public website.

d) Small arms:

i) Small arms will not be obtained by LEAs for the purpose of sale, lease, loan, personal use, rent, exchange, barter, transfer, or to secure a loan and shall be returned to DLA Disp Svcs at the end of their useful life. Cannibalization of small arms is not authorized.

ii) Temporary modifications to small arms are authorized; permanent modifications to small arms are not authorized (i.e. drilling holes in the lower receiver of a small arm). In cases of temporary modifications, all parts are to be retained and accounted for in a secured location under the original serial number for the small arm until final disposition is determined. If the modified small arm is transferred to another LEA, all parts will accompany the small arm to the receiving LEA.

iii) Small arms will be issued utilizing an acceptable ECR which obtains certain information about the property being issued to include (but is not limited to) the signature of the law enforcement officer who is accepting responsibility for the small arm(s), the serial number of the small arm, the date in which the law enforcement officer took possession of the small arm, etc.

iv) Small arms that are not carried on an officer's person or in the officer's immediate physical vicinity will be secured using "two levels of physical security". Two levels of physical security meaning two distinct lockable barriers, each specifically designed to render a small arm inaccessible and unusable to unauthorized persons. Lockable barriers meeting this description may be either manual or electronic.

v) Program participants no longer requiring program small arm(s) shall request authorization to transfer the small arm to another participating LEA or request authorization to turn-in/return the small arm. Transfers and turn-in requests shall receive final approval from the LESO; small arms will not physically move until the LESO provides official notification that the approval process is complete. When turning-in small arms to Anniston Army Depot, the LEA shall follow LESO turn-in guidance.

vi) Local destruction (DEMIL) of small arms is not authorized.

vii) Lost, Stolen or Destroyed (LSD) small arms:

(1) Program participants with multiple instances of LSD small arms in a five-year window will be assessed by DLA Disp Svcs to determine if a systemic problem exists IAW DLAI 4140.11.

(2) DLA OIG investigations may be initiated if small arms are improperly disposed of or become LSD while in program inventory. The State/LEA may be required to reimburse DLA the fair market value of the small arms when negligence, willful misconduct, or a violation of the MOA between the Federal Government and the State/U.S. Territory and/or this SPO is confirmed at the conclusion of the Financial Liability Investigation of Property Loss (FLIPL).

(a) Reimbursement will be within 60-days of the completion of the FLIPL.

(b) Title will never transfer to the recipient regardless of the status of the small arm.

(c) Payments due to DLA Disp Svcs, based upon the findings of the FLIPL, may be paid by one of three methods: 1) credit card via pay.gov, 2) cashier/ business check, or 3) wire transfer.

(3) In instances of LSD small arm recovery, DoD retains title in perpetuity and the small arm shall be immediately relinquished/surrendered back to the program.

11) PROGRAM COMPLIANCE REVIEWS (PCR)

a) <u>The LESO shall:</u>

i) Conduct PCRs to ensure that the SC/SPOC, and all LEAs within a State are compliant with the terms and conditions of the program as required by 10 USC § 2576a, the MOA between the Federal Government and the State/U.S. Territory and/or this SPO and any DLA Instructions and manuals regarding the program. PCRs are conducted to ensure property accountability, program compliance, and program eligibility.

ii) Conduct PCRs for participating States every 2 years, providing training to the State/LEA as needed.

iii) Reserve the right to conduct no notice PCRs, or require an annual review, or similar inspection, on a more frequent basis for any State/LEA.

iv) Intend to physically inventory 100% of property selected for review at each LEA during a PCR. The use of ECRs in lieu of physical inspection is discouraged during PCRs. Extensive use of the ECR (without prior coordination with LESO) may result in a non-compliance finding during the PCR.

v) Intend to review as much property as possible during a PCR.

(1) The goal is to review 20% of a State's overall small arms inventory.

(2) The goal for inventory selections (at LEAs selected for review) is 15% of an LEAs general property to include non-controlled property (DEMIL code A and Q6).

vi) Select LEAs not visited during the last three regularly scheduled PCR cycles (as applicable).

vii) Recommend corrective actions (which may include suspending a State/LEA from program participation) for findings of non-compliance identified during a PCR.

(1) The LESO shall issue corrective actions (with suspense dates) to the State, which will identify what is needed to rectify the identified deficiencies within the State/LEA.

(2) If the State/LEA fails to correct identified deficiencies within the LESO suspense dates, the LESO may move to restrict, suspend, or terminate the State/LEA from program participation.

(3) States found non-compliant for a PCR will be suspended for a minimum of 60-days and will not be reinstated until the State successfully passes a LESO-conducted PCR.

viii) Ensure the State/LEA understand that property shall be transferred to a participating agency with SC/SPOC and LESO approval or returned to DLA Disp Svcs when no longer needed or serviceable.

b) The State shall:

i) Assist the LESO as required, prior to, during and upon completion of the PCR.

ii) Assist in the coordination of the PCR daily schedule of events and forward the schedule to LEAs that have been selected for review.

iii) Contact LEAs that have been selected for the PCR via phone, email or in person to ensure they are aware of the schedule and are prepared for the PCR.

iv) Receive inventory selections from the LESO and forward them to the selected LEAs. The State shall ensure the LEA physically gathers the selected property in a central location (to the greatest extent possible) which will allow the LESO to physically inventory the property efficiently during the PCR.

v) Coordinate the use of any ECR with the LESO prior to the PCR.

vi) Ensure LEAs understand property shall be transferred to a participating agency with SC and LESO approval or returned to DLA Disp Svcs when deemed no longer needed or serviceable.

vii) Conduct State-level (internal) PCRs of participating LEAs to ensure property accountability, program compliance and program eligibility utilizing a PCR checklist provided by the LESO, or equivalent (for uniformity purposes).

(1) Ensure a State-level (internal) PCR of at least 8% of LEAs with program inventory is completed annually (3% of which will be focused on program participants with no controlled property). Results of the State-level (internal) PCR will be kept on-file with the State. Documentation shall be provided to the LESO for each LEA that received a State-level PCR.

(2) The State-level (internal) PCR will include, at minimum:

(a) A review of the dually-signed SPO, ensuring it is uploaded to the property accounting system.

(b) A review of the LEA application package to confirm authenticity and eligibility of the LEA.

(c) An inventory of property selected for review at each LEA.

(d) A review of each selected LEA files for any of the following which may include turn-in/transfer DD Form 1348-1A, ECR, small arm documentation, FLIPL documents, exception to policy letters, approved cannibalization requests, or other pertinent documentation as required.

(3) Request that the LESO restrict, suspend or terminate an LEA based on findings during State-level internal PCR or due to non-compliance with terms of the MOA between the Federal Government and the State/U.S. Territory and/or this SPO, DLA Instruction/Manual or any statute or regulation regarding the program.

(4) Notify the LESO and initiate an investigation into any questionable activity or action involving property issued to a LEA that comes to the attention of the State and is otherwise within the authority of the Governor/State to investigate. Upon conclusion of any such investigation, take appropriate action and/or make appropriate recommendations on restriction, suspension, or termination of the State/LEA to the LESO. The SC may suspend or terminate a State/LEA participation in the program at any time for non-compliance.

12) ANNUAL PHYSICAL INVENTORY Each State/LEA is required to conduct an annual physical inventory of all property on the active property book and provide certification in the property accounting system. DEMIL "A" and "Q6" property records will not be closed during the annual physical inventory period.
In the State of ___Arizona____________, the annual physical inventory and certification in the property accounting system process starts on July 1st and must be completed by ___August 31st______. The State shall:

a) Provide training to LEAs to properly conduct the annual physical inventory and complete the certification of property in the property accounting system.

b) Ensure an approved and current SPO is uploaded in the property accounting system for each LEA.

c) Validate the annual physical inventory certifications submitted by LEAs.

d) Adhere to annual physical inventory certification requirements as identified by the LESO. Physical inventories and certification statements will be maintained on file IAW the DLA records schedule.

e) Annually certify property is utilized and is within allocation limits IAW the MOA between the Federal Government and the State/U.S. Territory and this SPO .

f) Recommend suspension of program participants who fail to complete or submit the certified annual physical inventory.

13) REPORTING LOST, STOLEN, OR DESTROYED (LSD) PROPERTY Any property identified as LSD on a LEA current inventory, shall be reported to the State/LESO. A FLIPL (aka the DD Form 200) shall be submitted to the State/LESO for LSD property. Program participants agree to cooperate with investigations into LSD property by any federal, state, or local investigative body and, when requested, assist with recovery of LSD property.

a) LSD controlled property shall be reported to the State/LESO within 24-hours. Program participants may be required to provide their SC/SPOC additional documentation which may include (but is not limited to):

1) Comprehensive police report, 2) NCIC report/entry, and 3) Contact information for the Civilian Governing Body (CGB) over the LEA involved, to include: Title, Name, Email, and mailing address.

b) LSD property with a DEMIL code of “A” and “Q6” shall be reported to the State/LESO within 7-days.

14) RESTRICTION, SUSPENSION OR TERMINATION Program participants are required to abide by the terms and conditions of the MOA between the Federal Government and the State/U.S. Territory and this SPO in order to maintain active program participation status. If a State/LEA fails to comply with any term or condition of the MOA, SPO, DLA Instruction or Manual, federal statute or regulation, the State/LEA may be suspended, terminated, or placed on restricted status. Restriction, suspension, or termination notifications will be in writing and will identify remedial measures required for reinstatement (if applicable). *Suspension*-A specified period in which an entire State/LEA is prohibited from requesting or receiving additional property through the program. Additional requirements may be implemented, to include the State/LEA requirement to return specifically identified controlled property. Suspensions will be for a minimum of 60-days. *Termination-*The removal of a State/LEA from program participation. The terminated State/LEA shall transfer or turn-in all controlled property previously received through the program at the expense of the State/LEA involved. *Restricted Status-*A specified period in which a State/LEA is restricted from receiving an item or commodity due to isolated issues with the identified item or commodity. Restricted status may also include restricting a State/LEA from all controlled property.

a) State termination-The SC/SPOC will coordinate with LESO to identify a realistic timeframe to complete the transfer or turn-in of all property. The LESO retains final authority to determine timeframe requirements.

b) LEA termination-The SC/SPOC will coordinate with LESO to identify a realistic timeframe to complete the transfer or turn-in of all property. The LESO retains final authority to determine timeframe requirements.

c) In the event of a termination, the State/LEA will make every attempt to transfer the property of the terminated State/LEA to an authorized State/LEA, as applicable, prior to requesting a turn-in of the property to DLA Disp Svcs. In cases that require a repossession or turn-in of property, the State/LEA will bear all expenses related to the repossession, turn-in or transfer of property to DLA Disp Svcs.

d) The State shall:

i) Suspend LEAs for a minimum of 60-days in all situations relating to the suspected or actual abuse of property or requirements and/or repeated non-compliance related to the terms and conditions of this SPO. Suspension may lead to termination. The State shall also issue corrective action guidance to the LEA with suspense dates to rectify issues and/or discrepancies that caused the restriction, suspension, or termination. The State shall require the LEA to submit results on completed police investigations and/or reports on LSD property to include the LEA CAP. The LESO retains final discretion on reinstatement requests. Reinstatement to full participation from a restriction, suspension or termination is not automatic.

ii) Initiate corrective action to rectify suspensions or terminations of the LEA for non-compliance to the terms and conditions of the program. The State shall also make contact (until resolved) with suspended LEAs to ensure corrective actions are rectified within required timeframes provided by the LESO.

iii) Require the LEA to complete and submit results on completed police investigations or reports regarding LSD property. The State will submit all documentation to LESO upon receipt.

iv) Provide documentation to LESO when actionable items are rectified for the State/LEA.

v) Request that the LESO suspend or terminate an LEA based upon their findings during State-level internal PCR or due to non-compliance with any term of this SPO, DLA Instruction/Manual or any statute or regulation regarding the program.

vi) Notify the LESO and initiate an investigation into any questionable activity or action involving property issued to an LEA that comes to the attention of the State and is otherwise within the authority of the Governor/State to investigate. Upon conclusion of any such investigation, take appropriate action and/or make appropriate recommendations on restriction, suspension, or termination of the LEA to the LESO. The SC may revoke or terminate concurrence for LEA participation in the program at any time.

vii) Provide written request to the LESO for reinstatement of an LEA for full participation status at the conclusion of a restriction or suspension period. Written verification shall be provided that the SC/SPOC has validated the LEA CAP.

15) RECORDS MANAGEMENT The LESO, SC/SPOC, and LEAs participating in the program will maintain program records IAW the DLA records schedule. Records for property acquired through the program have retention controls based on the DEMIL code. Property records will be filed, retained, and destroyed IAW DLA records schedule. Records may include, but are not limited to: DD Form 1348-1A for transfers, turn-ins, requisitions, Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE) Forms 5 and 10.

16) TRADE SECURITY CONTROL (TSC) and COMPLIANCE WITH EXPORT CONTROL REGULATIONS Items transferred to program participants, including DEMIL A and Q (with an Integrity Code of 6) property, may be subject to export control restrictions. Program participants shall comply with U.S. export control laws and regulations if they contemplate further transfers of any property. Once title transfers, LEAs should consult with the Department of State (DoS) and Department of Commerce (DoC) export control regulators about the type of export controls that may apply to items, regardless of DEMIL code. Program participants may request a formal Commodity Classification from the DoC, Bureau of Industry and Security (BIS), or submit a general correspondence request to the DoS, Directorate of Defense Trade Controls. Information on managing exports of CCL items can be found at the U.S. DoC Bureau of Industry and Security website. Program participants shall notify all subsequent purchasers or transferees, in writing, of their responsibility to comply with U.S. export control laws and regulations.

17) NOTICES Any notices, communications, or correspondence related to this SPO shall be provided by email, the U.S. Postal Service (USPS), express service, or facsimile to the appropriate DLA office. The LESO may (from time to time) make unilateral modifications or amendments to the provisions of the MOA between the Federal Government and the State/U.S. Territory and/or this SPO. Notice of these changes will be provided to the State in writing. Unless the State takes immediate action to terminate the MOA between the Federal Government and the State/U.S. Territory and/or this SPO, such modifications or amendments will become binding. In such cases, reasonable opportunity will (insofar as practicable) be afforded the State/LEA to conform to changes affecting their operations.

18) ANTI-DISCRIMINATION By signing or accepting property, the State/LEA pledges agreement to comply with provisions of the national policies prohibiting discrimination: 1) On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 USC 2000d et seq.) as implemented by DoD regulations 32 CR Part 195, 2)On the basis of age, in the Age Discrimination Act of 1975 (42 USC 6101, et seq) as implemented by Department of Health and Human Services regulations in 45 CFR Part 90 and 3) On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973, P.L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, P.L. 93-516 (29 USC 794), as implemented by Department of Justice (DoJ) regulations in 28 CFR Part 41 and DoD regulations at 32 CFR Part 56. These elements are the minimum essential ingredients for establishment of a satisfactory business agreement between the State and the DoD.

19) INDEMNIFICATION CLAUSE The State/LEA is required to maintain adequate liability insurance to cover damages or injuries to persons or property relating to the use of property issued under the program. Self-insurance by the State/LEA is considered acceptable. The USG assumes no liability for damages or injuries to any person(s) or property arising from the use of property issued under the program. It is recognized that State and local law generally limit or preclude the State/LEA from agreeing to open ended indemnity provisions. However, to the extent permitted by State and local laws, the State/LEA shall indemnify and hold the USG harmless from any and all actions, claims, debts, demands, judgments, liabilities, cost, and attorney's fees arising out of, claimed on account of, or in any manner predicated upon loss of, or damage to property and injuries, illness or disabilities to, or death of any and all persons whatsoever, including members of the general public, or to the property of any legal or political entity including States, local and interstate bodies, in any manner caused by or contributed to by the State/LEA, its agents, servants, employees, or any person subject to its control while the property is in the possession of, used by, or subject to the control of the State/LEA, its agents, servants, or employees after the property has been removed from USG control.

20) TERMINATION This SPO may be terminated by either party, provided the other party receives a thirty (30) day notice (in writing) or as otherwise stipulated by Public Law. The undersigned SC hereby agrees to comply with all provisions set forth herein and acknowledges that any violation of the terms and conditions of this SPO may be grounds for immediate termination and possible legal consequences, to include pursuit of criminal prosecution if so warranted.

21) AGREEMENT OF PARTIES The parties below agree to enter this agreement as of the last date below:

Governor-appointed SC/SPOC, State of: Arizona

Full Name (Print): ____________________

Signature (Sign): ____________________ Date (MM/DD/YYYY): ____________

Chief Law Enforcement Official (CLEO) (or designee): Memo Espinoza

Title (Print): Chief of Police

Full Name (Print): Memo Espinoza

Signature (Sign): ____________________ Date (MM/DD/YYYY): ____________

CITY COUNCIL REPORT

ITEM NUMBER:	3.f.

SUBJECT: Resolution 1112-1224 - Authorizing the extension of the Intergovernmental Agreement with the Arizona Department of Forestry and Fire Management for the Healthy Forest Initiative Grant

MEETING DATE: 12/16/2024

TO: Mayor and Council

FROM: Renee Weatherless, Finance and Budget Director

THROUGH: Ron Corbin, City Manager, (623) 333-1011

REVIEWED: Ron Corbin, City Manager, (623) 333-1011

STRATEGIC PLAN:

This agenda item supports the following Avondale Strategic Outcome Area:

Innovative Program and Service Delivery - Avondale will continue to serve as a model of innovative, efficient, and responsive government.

Diverse Recreation and Entertainment Opportunities - Avondale provides residents with the ability to connect with amenities, businesses, and their community, enhancing the opportunity to live, work, and enjoy a healthy, active, and affordable lifestyle.

Natural Resources and Open Spaces - Avondale recognizes the value of its natural resources and promotes environmental sustainability and conservation in its operations, activities, and planning.

PURPOSE:

City Council will consider a request to adopt Resolution 1112-1224, approving the extension of the Intergovernmental Agreement with the Arizona Department of Forestry and Fire Management for the Healthy Forest Initiative Grant and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

The City of Avondale accepted the Healthy Forest Initiative Grant through Resolution 1028-0324 to eradicate multiple invasive plant species in the Agua Fria River as well as preserve native plant species. Removing invasive plant species eliminates the fire hazards near city facilities and creates open space for future recreational programming. The Arizona Department of Fire and Forestry Management awarded and the City of Avondale accepted $140,000 with a match of $14,000 to support the successful completion of the project.

DISCUSSION:

The City of Avondale accepted the Healthy Forest Initiative Grant, through Resolution 1028-0324, to eradicate multiple invasive plant species in the Agua Fria River as well as preserve native plant species. Removing invasive plant species eliminates the fire hazards near city facilities and creates open space for future recreational programming. The City of Avondale requested the extension because the most effective timeframe to eradicate one of the identified invasive plant species, the stinknet plant, is during the February-March timeframe. The Arizona Department of Forestry and Fire Management has granted an extension until June 30, 2025.

BUDGET IMPACT:
The extension will not impact the original city match or the budget.

RECOMMENDATION:
Staff recommends City Council adopt the Resolution approving the acceptance of the extension until June 30, 2025, and authorize the Mayor or City Manager, City Attorney, and City Clerk to execute the necessary documents.

Contact person for document distribution: *Shawn Pierce and Dominic DeCono*

RESOLUTION NO. 1112-1224

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING AMENDMENT NO. 1 TO THE INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA, DEPARTMENT OF FORESTRY AND FIRE MANAGEMENT FOR HAZARDOUS VEGETATION MITIGATION.

WHEREAS, the City of Avondale (the "City") and State of Arizona, Department of Forestry and Fire Management (the "Department") entered into an intergovernmental agreement, dated on or about March 26, 2024, for the Department to provide the City a 2024 Healthy Forest Initiative Grant in amount not to exceed $140,000 for hazardous vegetation mitigation (the "Agreement");

WHEREAS, the City and Department wish to enter into Amendment No. 1 to the Agreement to increase the amount of funding to not exceed $144,000.00 and extend the term of the Agreement until June 30, 2025.

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. Amendment No. 1 to the Agreement between the City and Department to provide the City with funds for hazardous vegetation mitigation (the "Amendment"), is hereby approved in substantially the form and substance 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 take all steps and execute all documents necessary to carry out the purpose and intent of this Resolution.

PASSED, AND ADOPTED by the City Council of the City of Avondale, Arizona, December 16, 2024.

Mike Pineda, Mayor

ATTEST:

Marcella Sarmiento, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 1112-1224

[Amendment No. 1]

See following pages.

	GRANT AMENDMENT	**Arizona Department of Forestry and Fire Management**
	Grant No: HFI 23-309	1110 W. Washington, Ste 500 Phoenix, Arizona 85007 (602) 771-1400

City of Avondale

Amendment No: 1

It is mutually agreed that the referenced grant agreement is amended as follows:

1. Pursuant to Page 1, Item IV: TERM OF AGREEMENT, per the written request dated October 31, 2024, the term of this agreement shall be extended to an end date of June 30, 2025.

   TOTAL project area to be completed: 21 acres

   TOTAL grant award amount: $144,000.00

All Other provisions shall remain in their entirety

Grantee hereby acknowledges receipt and acceptance of above amendment. Amendment only becomes effective once signed by both Grantee and Arizona Department of Forestry and Fire Management.	The above referenced Grant Amendment is hereby executed as of the final signature date below.
Grantee: **City of Avondale** Signature Date Authorized Signatory's Name and Title	Grantor: **Arizona Department of Forestry and Fire Management** Signature Date State Forester

CITY COUNCIL REPORT

ITEM NUMBER:	3.g.

SUBJECT: Ordinance 2035-1224 - Authorizing the Sale and Issuance of City of Avondale, General Obligation Bonds, Series 2025

MEETING DATE: 12/16/2024

TO: Mayor and Council

FROM: Renee Weatherless, Finance and Budget Director

THROUGH: Ron Corbin, City Manager, (623) 333-1011

REVIEWED: Ron Corbin, City Manager, (623) 333-1011

STRATEGIC PLAN:

This agenda item supports the following Avondale Strategic Outcome Area:

- Creative and Sustainable Community Development - Avondale is committed to creating a sense of place, a community of residents and local businesses unified by pride and common values.

This action will allow the city to fund a portion of the WRF expansion, which will allow the city to grow in a sustainable maner.

PURPOSE:

City Council will consider a request to: a) adopt Ordinance 2035-1224, approving the sale, execution, and delivery of General Obligation bonds; approving the form and authorizing the execution and delivery of agreements necessary for such sale; delegating authority to determine certain matters and terms with respect to the foregoing and declaring an emergency; and b) authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

General Obligation bonds are backed by the "full faith and credit" of the City and repaid through the city's secondary property tax. To assist with funding capital projects, staff is recommending the City of Avondale issue approximately $12.0 million in General Obligation Bonds, Series 2025. The City has remaining voter authorization to issue General Obligation Bonds from both the September 8, 1998 election and May 15, 2007 election.

DISCUSSION:

Staff has identified the Charles M Wolf Water Reclamation Facility Expansion (U0219) to use the proceeds of the General Obligation Bonds, Series 2025. The bond proceeds will only cover a portion of this project and future funding will likely come from pledged revenue obligations backed by utility revenues.

The proposed Ordinance will authorize the sale and issuance of City of Avondale, Arizona General Obligation Bonds, Series 2025, execution of necessary agreements and documents, and annual levy of property tax for the payment of the bonds. The Ordinance also prescribes certain terms and conditions, including the delegation to the Mayor, City Manager, and the Finance and Budget Director, or their designees, the authority to:

- Designate the final principal and payment amounts, maturities and payment dates, and interest rates and yields.
- Appoint a Bond Registrar and Paying Agent and approve the form of the contract.
- Accept a proposal from the Underwriter for the purchase of the General Obligation Bonds, Series 2025, and approve the form of the contract.
- Approve the form of the Preliminary Official Statement and Official Statement.
- Ratify all actions taken with respect to the preparation and distribution of the Preliminary Official Statement.
- Approve the continuing disclosure undertaking.
- Authorize and ratify all actions taken to further this Ordinance.

The Finance and Budget Director will appoint the Bond Registrar and Paying Agent based on a competitive process.

The Preliminary Official Statement will provide information necessary to the prospective buyers of the General Obligation Bonds, Series 2025, including detailed information on the bonds, debt service requirements, sources and uses of funds, audited financial statements, and legal documents and disclosures.

BUDGET IMPACT:

The adopted FY2025 budget includes $8.5 million in General Obligation bond funding for the Charles M. Wolf Water Reclamation Facility (WRF) expansion. The remaining proceeds from the sale will be programed into the FY2026 budget to cover a portion of the costs associated with the WRF expansion.

The debt associated with the General Obligation bonds will be repaid through property tax. The combined primary and secondary property tax rate is projected to remain below the rate of $2.00 per $100 of assessed valuation limit included in the city's adopted financial policies.

RECOMMENDATION:

Staff recommends that City Council adopt an Ordinance approving the sale and issuance of City of Avondale, Arizona General Obligation Bonds, Series 2025, to help finance capital projects and pay the cost of issuance; approving the form and authorizing the execution and delivery of agreements and documents necessary for the sale; delegating authority to determine certain matters and terms with respect to the foregoing; and authorizing all actions necessary to further this Ordinance; and authorize staff to transfer the necessary appropriation authority to the General Obligation Debt Fund.

Contact person for document distribution: *Renee Weatherless*
Keith Fallstrom
Stephen Kemp

ORDINANCE NO. 2035-1224

ORDINANCE (1) PROVIDING FOR THE SALE AND ISSUANCE OF CITY OF AVONDALE, ARIZONA GENERAL OBLIGATION BONDS, SERIES 2025 AND FOR THE ANNUAL LEVY OF A TAX FOR THE PAYMENT OF THE BONDS; (2) APPROVING THE FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF NECESSARY AGREEMENTS, INSTRUMENTS AND DOCUMENTS RELATED TO THE SALE AND ISSUANCE OF THE BONDS; (3) DELEGATING AUTHORITY TO THE MAYOR, THE MANAGER AND THE FINANCE AND BUDGET DIRECTOR OF THE CITY TO DETERMINE CERTAIN MATTERS AND TERMS WITH RESPECT TO THE FOREGOING; AND (4) AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO CONSUMMATE THE TRANSACTIONS CONTEMPLATED BY THIS ORDINANCE AND RATIFYING ALL ACTIONS TAKEN TO FURTHER THIS ORDINANCE.

WHEREAS, at a special bond election held in and for the City of Avondale, Arizona (the "City"), on September 8, 1998 (the "1998 Election"), there was submitted to the qualified electors thereof, among others, the following question:

<u>QUESTION NO. 1</u>

PURPOSE: WATER AND SEWER IMPROVEMENTS
AMOUNT: $15,000,000

Shall the City of Avondale, Arizona (the "City"), be authorized to incur indebtedness by the issuance of bonds of the City in the principal amount of $15,000,000 for the purpose of providing funds to improve, better and extend the existing water and sewer systems of the City, both within and without the City limits, to acquire, construct and improve water transmission lines and facilities, to construct water storage facilities, to design, construct and equip additional water treatment facilities, to improve existing water wells, to acquire and construct additional water wells, to acquire water systems, water rights, land and rights-of-way for the City's water and sewer systems, whether within or without the limits of the City, by purchase, exercise of the power of eminent domain or any other method of acquisition, to acquire, construct and improve sewer transmission lines and facilities, to design, improve, construct and equip the City's wastewater reclamation and sludge dewatering systems, to conduct studies for the City's water and sewer systems, to design, construct and equip additional wastewater treatment facilities, to acquire any other property of any kind for the City's water and sewer systems, to pay all expenses incidental to any of the foregoing and to the issuance and sale of the bonds, such bonds, or any series thereof, to be issued at the option of the Council of the City, as general obligation bonds of the City, payable from ad valorem taxes levied upon all of the taxable property in the City, or as water and sewer revenue bonds, payable solely from the revenues of the water and sewer systems of the City; such bonds, or any series thereof, to be in the denomination of $5,000 each or whole multiples thereof, to mature not more than 20 years from their date and to bear interest at a rate or rates not to exceed 9% per annum, payable semiannually; provided that each bond may be evidenced by one instrument or a succession of instruments and the interest may be payable more frequently, and at a variable rate or rates, none of which shall exceed 9% per annum?

; and

WHEREAS, at a special bond election held in and for the City of Avondale, Arizona (the "City"), on May 15, 2007 (the "2007 Election" and, together with the 1998 Election, the "Elections"), there was submitted to the qualified electors thereof, among others, the following question:

QUESTION 1

PURPOSE: WATER AND WASTEWATER SYSTEM IMPROVEMENTS
AMOUNT: $5,000,000

Shall the City of Avondale, Arizona (the "City"), be authorized to incur indebtedness by the issuance of bonds of the City in the principal amount of $5,000,000 for the purpose of providing funds to improve, better and extend the existing water and wastewater system of the City, both within and without the City limits, to acquire land and rights-of-way for such system, whether within or without the limits of the City, by purchase, exercise of the power of eminent domain or any other method of acquisition, to acquire, construct and improve transmission lines and facilities, to remove and replace the existing facilities, to conduct studies for such system, to design, construct and equip additional treatment and production facilities, to acquire any other property of any kind for such system and to pay all expenses incidental to any of the foregoing and to the sale and issuance of such bonds; such bonds, or any series thereof, to be issued at the option of the Council of the City as general obligation bonds of the City, payable from ad valorem taxes levied upon all of the taxable property in the City, or as water and/or sewer system revenue bonds, payable solely from the revenues of the water and/or sewer systems of the City, or as tax-secured water and/or sewer revenue bonds, payable from the revenues of the water and/or sewer systems of the City, and if such revenues prove insufficient, from ad valorem taxes levied upon all of the taxable property in the City and to be in the denomination of $5,000 each or whole multiples thereof, to mature not more than 30 years from their date and to bear interest at a rate or rates

> not to exceed 12% per annum, payable semiannually; provided that each bond may be evidenced by one instrument or a succession of instruments and the interest thereon may be payable more frequently, and at a variable rate or rates, none of which shall exceed 12% per annum?
>
> The issuance of these bonds will result in an annual levy of property taxes sufficient to pay the debt on the bonds, unless the governing body provides for payment from other sources.

; and

WHEREAS, the returns of the Elections were duly canvassed by the Mayor and Council of the City (the "Council"), and certificates disclosing the purposes of the Elections, the total number of votes cast thereat, the total number of votes for and against the issuance of the bonds, and stating that the creation of the indebtedness by the issuance of the bonds in accordance with the foregoing questions was ordered, have been filed and recorded in the office of the County Recorder of Maricopa County, Arizona; and

WHEREAS, a majority of the qualified electors of the City, voting at the Elections voted "For the Bonds," in answer to the foregoing questions; and

WHEREAS, the Council has determined to sell and issue all or a portion of the authorized amount of such bonds (the "Bonds") as general obligation bonds for the purposes granted at the Elections; and

WHEREAS, the Council will receive a proposal from Piper Sandler & Co. (the "Underwriter"), and has determined that the Bonds should be sold through negotiation to the Underwriter on such terms as may hereafter be approved by the Authorized Representatives (as defined herein); and

WHEREAS, the City has retained Stifel, Nicolaus & Company, Incorporated as financial advisor to the City pursuant to the Strategic Alliance of Volume Expenditures (SAVE) Cooperative Response Proposal #C-005-2223; and

WHEREAS, all things required to be done preliminary to the authorization, sale and issuance of the Bonds have been duly done and performed in the manner required by law, and the Council is now empowered to proceed with the sale and issuance of the Bonds.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AS FOLLOWS:

<u>SECTION 1</u>. <u>Authorization and Terms</u>.

(a) (1) The Bonds, to provide funds for the purposes set forth in the above-mentioned forms of ballot questions submitted to the qualified electors of the City at the Elections, are hereby authorized to be sold and issued as a series of bonds of the City to be designated "City of Avondale, Arizona General Obligation Bonds, Series 2025" in accordance with this Ordinance and applicable law.

(2) The Bonds are authorized by the provisions of Title 35, Chapter 3, Article 3, Arizona Revised Statutes, and constitute (i) the fifth series of bonds of a total authorized amount of not to exceed $31,000,000 principal amount of bonds of the City approved by the qualified electors of the City at the 1998 Election; and (ii) the fourth series of bonds of a total authorized amount of not to exceed $70,000,000 principal amount of bonds of the City approved by the qualified electors of the City at the 2007 Election.

(3) The proceeds from the sale of the Bonds shall be credited against the total principal amount of bonds and the specific amount of bonds so authorized by the qualified electors of the City at the Elections and for each respective purpose and project as set forth in the applicable question on the official form of ballot and the proceeds of the Bonds shall be applied to each respective purpose and project as determined by the Authorized Representatives on behalf of the City.

(b) The Mayor, any other member of the Council, the Manager, the Finance and Budget Director of the City or the designees of any of them (collectively, the "Authorized Representatives") are hereby authorized and directed to determine on behalf of the City: (1) the total principal amount of the Bonds (but not to exceed $12,000,000 aggregate principal amount) and the amounts to be allocated to each of the purposes authorized by the Elections; (2) the final principal and maturity schedule of the Bonds (but none of the Bonds to mature later than July 1, 2045); (3) the interest rates with respect to the Bonds and the dates for payment of such interest (the "interest payment dates"); (4) the provisions for redemption in advance of maturity of the Bonds; (5) the sales date, sales price and other sales terms of the Bonds (including provision for underwriter's compensation, original issue discount and original issue premium); and (6) the provision for credit enhancement, if any, for the Bonds; provided, however, that such determinations must result in a yield for federal income tax purposes with respect to the Bonds of not to exceed five and one-half percent (5.5%).

(c) (1) The Bonds shall be dated the date of their initial authentication and delivery and issued in the denomination of $5,000 of principal amount each or integral multiples thereof and only in fully registered form.

(2) The principal of and premium, if any, on the Bonds shall be payable at maturity or prior redemption upon presentation and surrender thereof at the designated corporate trust office of the Bond Registrar and Paying Agent (as defined herein).

(3) The Bonds shall bear interest at their respective rates from their date to the maturity or prior redemption of each Bond, payable commencing on the first interest payment date. Interest on the Bonds shall be payable by check, dated as of the interest payment date, mailed to the registered owners thereof and at the addresses appearing on the registration books maintained by the Bond Registrar and Paying Agent at the close of business on the fifteenth (15th) day of the month next preceding that interest payment date (the "regular record date"). Any such interest on a Bond which is not timely paid or duly provided for shall cease to be payable to the registered owner thereof (or of one or more

predecessor Bonds) as of the regular record date, and shall be payable to the registered owner thereof (or of one or more predecessor Bonds) at the close of business on a special record date for the payment of that overdue interest. The special record date shall be fixed by the Bond Registrar and Paying Agent whenever moneys become available for payment of the overdue interest, and notice of the special record date shall be given to the registered owners of Bonds not less than ten (10) days prior thereto.

(4) The principal of and premium, if any, and interest on the Bonds shall be payable in lawful money of the United States of America. Notwithstanding anything to the contrary herein and as may be set forth in the definitive form of the Bonds, the principal of and premium, if any, and interest on the Bonds may be paid by wire transfer in immediately available funds if satisfactory arrangements are made.

SECTION 2. Prior Redemption of the Bonds.

(a) Notice of redemption of any Bond shall be mailed by first class mail, postage prepaid, not more than sixty (60) nor less than thirty (30) days prior to the date set for redemption to the registered owner of the Bond or Bonds being redeemed at the address shown on the registration books for the Bonds maintained by the Bond Registrar and Paying Agent. Failure to properly give such notice of redemption shall not affect the redemption of any Bond for which notice was properly given. Such notice may provide that the redemption is conditional upon moneys for payment of the redemption price being held in separate accounts by the Bond Registrar and Paying Agent.

(b) On the date designated for redemption by notice given as herein provided, the Bonds or portions thereof to be redeemed shall become and be due and payable at the redemption price for such Bonds or such portions thereof on such date, and, if moneys for payment of the redemption price are held in separate accounts by the Bond Registrar and Paying Agent, interest on such Bonds or such portions thereof shall cease to accrue, such Bonds or such portions thereof shall cease to be entitled to any benefit or security hereunder, the registered owners of such Bonds or such portions thereof shall have no rights in respect thereof except to receive payment of the redemption price thereof and accrued interest thereon and such Bonds or such portions thereof shall be deemed paid and no longer outstanding.

(c) The City may redeem any amount which is included in a Bond in the denomination in excess of, but divisible by, $5,000. In that event, the registered owner shall submit the Bond for partial redemption and the Bond Registrar and Paying Agent shall make such partial payment and shall cause to be issued a new Bond in a principal amount which reflects the redemption so made, to be authenticated and delivered to the registered owner thereof.

SECTION 3. Security; Defeasance.

(a) After the Bonds are issued, the Council shall enter on its minutes a record of the Bonds sold and their numbers and dates. For the purpose of paying the principal of, interest on and costs of administration of the registration and payment of the Bonds, there shall be levied on all the taxable property in the City a continuing, direct, annual, ad valorem tax sufficient to pay all such principal, interest and administration costs of and on the Bonds as the same become due, such taxes to be levied, assessed and collected at the same time and in the same manner as other taxes of the City are levied, assessed and collected. The tax shall be extended and collected for the City, and the officials of the City and Maricopa County, Arizona, charged with the annual extension and collection of taxes, without further instructions from the Council, shall extend and collect the tax upon issuance of the Bonds. All moneys collected through such tax shall be paid into the treasury of the City, to the credit of a "Debt Service Fund" of the City for the Bonds, from which fund the Bonds shall be payable, which tax moneys shall be held in sub funds to be known as the "Interest Fund" and the "Redemption Fund," which funds shall be kept separate and apart from and not commingled with any other funds or moneys and which shall be used solely for, respectively, payment of interest on and principal of, and premium, if any, on the Bonds.

(b) Any Bond or portion thereof in authorized denominations shall be deemed paid and defeased and thereafter shall have no claim on ad valorem taxes levied on taxable property in the City (i) if there is deposited with a bank or comparable financial institution, in trust, moneys or obligations issued by or guaranteed by the United States government ("Defeasance Obligations") or both which, with the maturing principal of and interest on such Defeasance Obligations, if any, will be sufficient, as evidenced by a certificate or report of an accountant, to pay the principal of and interest and any premium on such Bond or portion thereof as the same matures, comes due or becomes payable upon prior redemption, and (ii) if such defeased Bond or portion thereof is to be redeemed, notice of such redemption has been given in accordance with provisions hereof or the City has submitted to the Bond Registrar and Paying Agent instructions expressed to be irrevocable as to the date upon which such Bond or portion thereof is to be redeemed and as to the giving of notice of such redemption. If the maturing principal of the Defeasance Obligations or other moneys, or both, is sufficient to pay the principal of, premium, if any, and interest on such Bond or portion thereof as the same matures, comes due or becomes payable upon prior redemption, a certificate or report of an accountant shall not be required. Bonds the payment of which has been provided for in accordance with this Section shall no longer be deemed payable or outstanding hereunder and thereafter such Bonds shall be entitled to payment only from the moneys or Defeasance Obligations deposited to provide for the payment of such Bonds.

SECTION 4. Use of Proceeds.

Proceeds of the sale of the Bonds shall be deposited in the treasury of the City to the credit of the "General Obligation Bonds Series 2025 Construction Fund" in the amounts determined as provided in Section 1(a)(3) hereof. The City will use appropriate project fund accounting to track the separate projects and to ensure proceeds are used solely for the purposes specified in the aforementioned ballot questions submitted to the qualified electors of the City at the Elections; provided, however, that (i) such proceeds may be invested in the manner and under the circumstances allowed by law, and (ii) any moneys remaining in any sub fund after such purposes shall have been accomplished shall be transferred to the applicable "Interest Fund" and "Redemption Fund" in the same fashion as taxes.

SECTION 5. Form of Bonds.

(a) The Bonds (including the form of certificate of authentication and form of assignment therefor) shall be in substantially the form set forth in the Exhibit attached hereto. There may be such necessary and appropriate omissions, insertions and variations as are permitted or required hereby and are approved by those officers executing the Bonds in such form. Execution thereof by such officers shall constitute conclusive evidence of such approval.

(b) The Bonds may have notations, legends or endorsements required by law, securities exchange rule or usage. Each Bond shall show both the date of the issue and the date of authentication and registration of each Bond.

(c) The Bonds are prohibited from being converted to coupon or bearer bonds without the consent of the Council and approval of a nationally recognized bond counsel to the City.

SECTION 6. Execution and Delivery of Bonds.

(a) The Bonds shall be executed for and on behalf of the City by the Mayor of the City and attested by the Clerk of the City. Such signatures may be by mechanical reproduction; however, such officers shall manually sign a certificate adopting as and for such signatures on the Bonds the respective mechanically reproduced signatures affixed to the Bonds.

(b) If an officer whose signature is on a Bond no longer holds that office at the time such Bond is authenticated and registered, the Bond shall nevertheless be valid and binding so long as such Bond would otherwise be valid and binding.

(c) A Bond shall not be valid or binding until authenticated by the manual signature of an authorized representative of the Bond Registrar and Paying Agent. The signature of the authorized representative of the Bond Registrar and Paying Agent shall be conclusive evidence that the Bond has been authenticated and issued pursuant to this Ordinance.

SECTION 7. Mutilated, Lost or Destroyed Bonds.

In case any Bond becomes mutilated or destroyed or lost, the City shall cause to be executed and delivered a new Bond of like type, date, maturity date and tenor in exchange and substitution for and upon the cancellation of such mutilated Bond or in lieu of and in substitution for such Bond destroyed or lost, upon the registered owner paying the reasonable expenses and charges of the City in connection therewith and, in the case of a Bond destroyed or lost, filing with the Bond Registrar and Paying Agent by the registered owner evidence satisfactory to the Bond Registrar and Paying Agent that such Bond was destroyed or lost, and furnishing the Bond Registrar and Paying Agent with a sufficient indemnity bond pursuant to Section 47-8405, Arizona Revised Statutes.

SECTION 8. Acceptance of Proposal.

(a) Subject to the discretion delegated by Section 1(b) hereof, the Authorized Representatives are hereby authorized to accept a proposal of the Underwriter for the purchase of the Bonds which satisfies the terms and conditions of this Ordinance on behalf of the Council, and the Bonds are hereby ordered to be sold to the Underwriter in accordance with the terms of the Bond Purchase Agreement with the Underwriter presented to the Council at the meeting at which this Ordinance was adopted (the “Purchase Agreement”) and which is hereby approved. The Authorized Representatives are hereby authorized to execute the Purchase Agreement, for and on behalf of the Council, in a final form satisfactory to the Authorized Representatives, and such execution and delivery by the Authorized Representatives shall indicate the approval thereof on behalf of the Council by the Authorized Representatives.

(b) The Authorized Representatives are hereby requested to cause the Bonds to be delivered to the Underwriter upon receipt of payment therefor and satisfaction of the other conditions for delivery thereof in accordance with the terms of the sale provided in the Purchase Agreement.

SECTION 9. Official Statement and Continuing Disclosure.

(a) (1) The preparation, distribution and use of a preliminary official statement relating to the Bonds (the "Preliminary Official Statement") in substantially the form presented to the Council at the meeting at which this Ordinance was adopted is in all respects hereby ratified, approved and confirmed, and the Authorized Representatives are hereby authorized to certify or otherwise represent that the Preliminary Official Statement, in original or revised form, is a "deemed final" official statement (except for permitted omissions) of the City as of a particular date for purposes of Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended.

(2) The Underwriter is authorized to prepare or cause to be prepared, and the Authorized Representatives are authorized and directed to approve, on behalf of the Council, and to execute and deliver, a final Official Statement in substantially the form of the Preliminary Official Statement, modified to reflect matters related to the sale of the Bonds, for distribution and use in connection with the offering and sale of the Bonds. The execution and delivery of such final Official Statement by any of the Authorized Representatives shall be conclusively deemed to evidence the approval of the status, form and contents thereof by the Council.

(b) Subject to annual appropriation to cover the costs of compliance therewith, the City shall comply with and carry out all of the provisions of a Continuing Disclosure Undertaking, to be dated the date of issuance of the Bonds (the "Undertaking"), with respect to the Bonds, which any of the Authorized Representatives are hereby authorized, for and on behalf of the Council, to execute, and the Clerk or the Deputy Clerk of the City is hereby authorized to attest and deliver, in substantially the form submitted to the Council at the meeting at which this Ordinance was adopted, with such additions, deletions and modifications as shall be approved by the Authorized Representatives, and such execution and delivery shall constitute evidence of the approval of the Authorized Representatives of any departures from the form submitted to the Council at the time of adoption of this Ordinance. Notwithstanding any other provision of this Ordinance, failure of the City (if obligated pursuant to the Undertaking) to comply with the Undertaking shall not be considered an event of default; however, any beneficial owner (i.e., any person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Bonds for federal income tax purposes) may take such actions as may be necessary and appropriate, including seeking specific performance by court order, to cause the City to comply with its obligations under this Section.

SECTION 10. Bond Registrar and Paying Agent.

(a) The Authorized Representatives are hereby authorized to appoint the initial authenticating agent, bond registrar, transfer agent and paying agent with respect to the Bonds (the "Bond Registrar and Paying Agent"), and a standard form contract therewith covering such services, with such additions, deletions and modifications as shall be approved by the Authorized Representatives, is hereby approved, and any of the Authorized Representatives are hereby authorized to execute, and the Clerk or the Deputy Clerk of the City are hereby authorized to attest and deliver, such contract. The Bond Registrar and Paying Agent shall maintain the books of the City for the registration of ownership of each Bond.

(b) A Bond may be transferred on the registration books upon delivery and surrender of the Bond to the Bond Registrar and Paying Agent at its designated corporate trust office, accompanied by a written instrument of transfer in form and with guaranty of signature satisfactory to the Bond Registrar and Paying Agent, duly executed by the registered owner of the Bond to be transferred or the attorney-in-fact or legal representative thereof, containing written instructions as to the details of the transfer of such Bond. No transfer of any Bond shall be effective until entered on the registration books.

(c) In all cases upon the transfer of a Bond, the Bond Registrar and Paying Agent shall enter the transfer of ownership in the registration books and shall authenticate and deliver in the name of the transferee or transferees a new fully registered Bond or Bonds of the same type and of the authorized denominations (except that no Bond shall be issued which relates to more than a single principal maturity) for the aggregate principal amount which the registered owner is entitled to receive at the earliest practicable time in accordance with the provisions of this Section.

(d) All costs and expenses of initial registration and payment of the Bonds shall be borne by the City, but the City and the Bond Registrar and Paying Agent shall charge the registered owner of such Bond for every subsequent transfer of a Bond including an amount sufficient to reimburse them for any transfer fee, tax or other governmental charge required to be paid with respect to such transfer and may require that such charge including for such transfer fee, tax or other governmental charge be paid before any such new Bond shall be delivered.

(e) The City and the Bond Registrar and Paying Agent shall not be required to issue or transfer any Bonds during a period beginning with the opening of business on any regular record date and ending with the close of business on the corresponding interest payment date.

(f) The Bonds shall be subject to a Book-Entry System (as defined herein) of ownership and transfer, except as provided in subsection (3) of this subsection. The general provisions for effecting the Book-Entry System are as follows:

(1) The City hereby designates The Depository Trust Company, New York, New York, as the initial Depository (as defined herein) hereunder.

(2) Notwithstanding the provisions of this Section or of the Bonds to the contrary and so long as the Bonds are subject to a Book-Entry System, the Bonds shall initially be evidenced by one typewritten certificate for each maturity in an amount equal

to the aggregate principal amount thereof. The Bonds so initially delivered shall be registered in the name of "Cede & Co." as nominee for The Depository Trust Company. The Bonds may not thereafter be transferred or exchanged on the registration books of the City maintained by the Bond Registrar and Paying Agent except:

(a) to any successor Depository designated pursuant to subsection (3) of this subsection;

(b) to any successor nominee designated by a Depository; or

(c) if the City shall elect to discontinue the Book-Entry System pursuant to subsection (3) of this subsection, the City shall cause the Bond Registrar and Paying Agent to authenticate and deliver replacement Bonds in fully registered form in authorized denominations in the names of the Beneficial Owners (as defined herein) or their nominees, as certified by the Depository, at the expense of the City; thereafter the other applicable provisions of this Ordinance regarding registration, transfer and exchange of the Bonds shall apply.

(3) The Bond Registrar and Paying Agent, pursuant to a request from the City for the removal or replacement of the Depository, and upon thirty (30) days' notice to the Depository, may remove or replace the Depository. The Bond Registrar and Paying Agent shall remove or replace the Depository at any time pursuant to the request of the City. The Depository may determine not to continue to act as Depository for the Bonds upon thirty (30) days' written notice to the City and the Bond Registrar and Paying Agent. If the use of the Book-Entry System is discontinued, then after the Bond Registrar and Paying Agent has made provision for notification of the Beneficial Owners of their book entry interests in the Bonds by appropriate notice to the then Depository, the City and the Bond Registrar and Paying Agent shall permit withdrawal of the Bonds from the Depository and authenticate and deliver the Bond certificates in fully registered form and in denominations authorized by this Section to the assignees of the Depository or its nominee. Such withdrawal, authentication and delivery shall be at the cost and expense (including costs of printing or otherwise preparing, and delivering, such replacement Bond certificates) of the City.

(4) So long as the Book-Entry System is used for the Bonds, the City and the Bond Registrar and Paying Agent shall give any notice of redemption or any other notices required to be given to registered owners of Bonds only to the Depository or its nominee registered as the owner thereof. Any failure of the Depository to advise any of its participants, or of any participant to notify the Beneficial Owner, of any such notice and its content or effect shall not affect the validity of the redemption of the Bonds to be redeemed or of any other action premised on such notice. Neither the City nor the Bond Registrar and Paying Agent shall be responsible or liable for the failure of the Depository or any participant thereof to make any payment or give any notice to a Beneficial Owner in respect of the Bonds or any error or delay relating thereto.

(5) Notwithstanding any other provision of this Section or Section 2(b) hereof or of the Bonds to the contrary, so long as the Bonds are subject to a Book-Entry System,

it shall not be necessary for the registered owner to present the applicable Bond for payment of mandatory redemption installments, if any. The mandatory redemption installments may be noted on books kept by the Bond Registrar and Paying Agent and the Depository for such purpose, and the Bonds shall be tendered to the Bond Registrar and Paying Agent at their maturity.

(6) For purposes of this Section, "Beneficial Owners" shall mean actual purchasers of the Bonds whose ownership interest is evidenced only in the Book-Entry System maintained by the Depository; "Book-Entry System" shall mean a system for clearing and settlement of securities transactions among participants of a Depository (and other parties having custodial relationships with such participants) through electronic or manual book-entry changes in accounts of such participants maintained by the Depository hereunder for recording ownership of the Bonds by Beneficial Owners and transfers of ownership interests in the Bonds and "Depository" shall mean The Depository Trust Company, New York, New York or any successor depository designated pursuant to this Section.

SECTION 11. General Federal Tax Law Covenants.

(a) (1) As will be provided in greater detail in the Certificate Relating To Federal Tax Matters to be delivered upon the initial delivery of the Bonds (the "Tax Certificate"), the City shall not make or direct the making of any investment or other use of the proceeds of any Bonds which would cause such Bonds to be "arbitrage bonds" as that term is defined in Section 148 (or any successor provision thereto) of the Internal Revenue Code of 1986, as amended (the "Code"), or "private activity bonds" as that term is defined in Section 141 (or any successor provision thereto) of the Code, and shall comply with the requirements of the Code sections and the regulations promulgated thereunder (the "Regulations") throughout the term of the Bonds. In consideration of the purchase and acceptance of the Bonds by such holders from time to time and of retaining such exclusion and as authorized by Title 35, Chapter 3, Article 7, Arizona Revised Statutes, the Council covenants, and the appropriate officials of the City are hereby directed, to take all action required to maintain such exclusion or to refrain from taking any action prohibited by the Code which would adversely affect in any respect such exclusion.

(2) The City shall be the owner of the facilities financed with the proceeds of the sale of the Bonds (the "Facilities") for federal income tax purposes. Except as otherwise advised in a Bond Counsel's Opinion (as defined herein), the City shall not enter into (i) any management or service contract with any entity other than a governmental entity for the operation of any portion of the Facilities unless the management or service contract complies with the requirements of the Code, the Regulations and any applicable interpretive guidance with respect thereto as may control at the time, or (ii) any lease or other arrangement with any entity other than a governmental entity that gives such entity special legal entitlements with respect to any portion of the Facilities. Also, the payment of principal and interest with respect to the Bonds shall not be guaranteed (in whole or in part) by the United States or any agency or instrumentality of the United States. The proceeds of the Bonds, or amounts treated as proceeds of the Bonds, shall not be invested (directly or indirectly) in federally insured deposits or accounts, except to the extent such

proceeds (i) may be so invested for an initial temporary period until needed for the purpose for which the Bonds are being issued, (ii) may be so used in making investments of a bona fide debt service fund or (iii) may be invested in obligations issued by the United States Treasury.

(3) The procedures and covenants contained in any arbitrage rebate provision or separate agreement executed in connection with the issuance of the Bonds (initially Section 12 hereof) shall be complied with for so long as compliance is necessary in order to maintain the exclusion from gross income for federal income tax purposes of interest on the Bonds.

(b) (1) The City shall take all necessary and desirable steps, as determined by the Council, to comply with the requirements hereunder in order to ensure that interest on the Bonds is excluded from gross income for federal income tax purposes under the Code; provided, however, compliance with any such requirement shall not be required in the event the City receives a Bond Counsel's Opinion that either (i) compliance with such requirement is not required to maintain the exclusion from gross income of interest on the Bonds, or (ii) compliance with some other requirement will meet the requirements of the Code. In the event the City receives such a Bond Counsel's Opinion, this Ordinance shall be amended to conform to the requirements set forth in such opinion.

(2) If for any reason any requirement hereunder is not complied with, the Council shall take all necessary and desirable steps, as determined by the City, to correct such noncompliance within a reasonable period of time after such noncompliance is discovered or should have been discovered with the exercise of reasonable diligence and the City shall pay any required interest or penalty under Regulations Section 1.148-3(h).

(c) The City has adopted post-issuance tax compliance procedures, with which the City shall comply.

<u>SECTION 12</u>. <u>Arbitrage Rebate Covenants</u>.

(a) Terms not otherwise defined in Subsection (b) hereof shall have the meanings given to them in the Tax Certificate.

(b) The following terms shall have the following meanings:

"Bond Counsel's Opinion" shall mean an opinion signed by an attorney or firm of attorneys of nationally recognized standing in the field of law relating to municipal bonds selected by the City.

"Bond Year" shall mean each one-year period beginning on the day after the expiration of the preceding Bond Year. The first Bond Year shall begin on the date of issue of the Bonds and shall end on the date selected by the City, provided that the first Bond Year shall not exceed one calendar year. The last Bond Year shall end on the date of retirement of the last Bond.

"Bond Yield" is as indicated in the Tax Certificate. Bond Yield shall be recomputed if required by Regulations Section 1.148-4(b)(4) or 4(h)(3). Bond Yield shall mean the discount rate that produces a present value equal to the Issue Price of all unconditionally payable payments of principal, interest and fees for qualified guarantees within the meaning of Regulations Section 1.148-4(f) and amounts reasonably expected to be paid as fees for qualified guarantees in connection with the Bonds as determined under Regulations Section 1.148-4(b). The present value of all such payments shall be computed as of the date of issue of the Bonds and using semiannual compounding on the basis of a 360-day year.

"Gross Proceeds" shall mean:

(i) any amounts actually or constructively received by the City from the sale of the Bonds but excluding amounts used to pay accrued interest on the Bonds within one year of the date of issuance of the Bonds;

(ii) transferred proceeds of the Bonds under Regulations Section 1.148-9;

(iii) any amounts actually or constructively received from investing amounts described in (i), (ii) or this (iii); and

(iv) replacement proceeds of the Bonds within the meaning of Regulations Section 1.148-1(c). Replacement proceeds include amounts reasonably expected to be used directly or indirectly to pay debt service on the Bonds, pledged amounts where there is reasonable assurance that such amounts will be available to pay principal or interest on the Bonds in the event the City encounters financial difficulties and other replacement proceeds within the meaning of Regulations Section 1.148-1(c)(4). Whether an amount is Gross Proceeds is determined without regard to whether the amount is held in any fund or account.

"Investment Property" shall mean any security, obligation (other than a tax-exempt bond within the meaning of Code Section 148(b)(3)(A)), annuity contract or investment-type property within the meaning of Regulations Section 1.148-1(b).

"Issue Price" is as indicated in the Tax Certificate and shall be determined as provided in Regulations Section 1.148-1(b).

"Nonpurpose Investment" shall mean any Investment Property acquired with Gross Proceeds, and which is not acquired to carry out the governmental purposes of the Bonds.

"Payment" shall mean any payment within the meaning of Regulations Section 1.148-3(d)(1) with respect to a Nonpurpose Investment.

"Rebate Requirement" shall mean at any time the excess of the future value of all Receipts over the future value of all Payments. For purposes of calculating the Rebate Requirement the Bond Yield shall be used to determine the future value of Receipts and Payments in accordance with Regulations Section 1.148-3(c). The Rebate Requirement is zero for any Nonpurpose Investment meeting the requirements of a rebate exception under Section 148(f)(4) of the Code or Regulations Section 1.148-7.

"Receipt" shall mean any receipt within the meaning of Regulations Section 1.148-3(d)(2) with respect to a Nonpurpose Investment.

"Regulations" shall mean Sections 1.148-1 through 1.148-11 and Section 1.150-1 of the regulations of the United States Department of the Treasury promulgated under the Code, including and any amendments thereto or successor regulations.

(c) The City shall cause the Rebate Requirement to be calculated and shall pay to the United States of America:

(1) not later than 60 days after the end of the fifth Bond Year and every fifth Bond Year thereafter, an amount which, when added to the future value of all previous rebate payments with respect to the Bonds (determined as of such Computation Date), is equal to at least 90% of the sum of the Rebate Requirement (determined as of the last day of such Bond Year) plus the future value of all previous rebate payments with respect to the Bonds (determined as of the last day of such Bond Year); and

(2) not later than 60 days after the retirement of the last Bond, an amount equal to 100% of the Rebate Requirement (determined as of the date of retirement of the last Bond).

Each payment required to be made under this Section shall be filed with the Internal Revenue Service Center, Ogden, Utah 84201, on or before the date such payment is due, and shall be accompanied by IRS Form 8038-T.

(d) No Nonpurpose Investment shall be acquired for an amount in excess of its fair market value. No Nonpurpose Investment shall be sold or otherwise disposed of for an amount less than its fair market value.

(e) For purposes of Subsection (d), whether a Nonpurpose Investment has been purchased or sold or disposed of for its fair market value shall be determined as follows:

(1) The fair market value of a Nonpurpose Investment generally shall be the price at which a willing buyer would purchase the Nonpurpose Investment from a willing seller in a bona fide arm's length transaction. Fair market value shall be determined on the date on which a contract to purchase or sell the Nonpurpose Investment becomes binding.

(2) Except as provided in Subsection (f) or (g), a Nonpurpose Investment that is not of a type traded on an established securities market, within the meaning of Code Section 1273, is rebuttably presumed to be acquired or disposed of for a price that is not equal to its fair market value.

(3) If a United States Treasury obligation is acquired directly from or sold or disposed of directly to the United States Treasury, such acquisition or sale or disposition shall be treated as establishing the fair market value of the obligation.

(f) The purchase price of a certificate of deposit that has a fixed interest rate, a fixed payment schedule and a substantial penalty for early withdrawal is considered to be its fair market value if the yield on the certificate of deposit is not less than:

(1) the yield on reasonably comparable direct obligations of the United States; and

(2) the highest yield that is published or posted by the provider to be currently available from the provider on reasonably comparable certificates of deposit offered to the public.

(g) A guaranteed investment contract shall be considered acquired and disposed of for an amount equal to its fair market value if:

(1) A bona fide solicitation in writing for a specified guaranteed investment contract, including all material terms, is timely forwarded to all potential providers. The solicitation must include a statement that the submission of a bid is a representation that the potential provider did not consult with any other potential provider about its bid, that the bid was determined without regard to any other formal or informal agreement that the potential provider has with the City or any other person (whether or not in connection with the Bonds), and that the bid is not being submitted solely as a courtesy to the City or any other person for purposes of satisfying the requirements in the Regulations that the City receive bids from at least one reasonably competitive provider and at least three providers that do not have a material financial interest in the Bonds.

(2) All potential providers have an equal opportunity to bid, with no potential provider having the opportunity to review other bids before providing a bid.

(3) At least three reasonably competitive providers (i.e. having an established industry reputation as a competitive provider of the type of investments being purchased) are solicited for bids. At least three bids must be received from providers that have no material financial interest in the Bonds (e.g., a lead underwriter within 15 days of the issue date of the Bonds or a financial advisor with respect to the investment) and at least one of such three bids must be from a reasonably competitive provider. If the City uses an agent to conduct the bidding, the agent may not bid.

(4) The highest-yielding guaranteed investment contract for which a qualifying bid is made (determined net of broker's fees) is purchased.

(5) The determination of the terms of the guaranteed investment contract takes into account as a significant factor the reasonably expected deposit and drawdown schedule for the amounts to be invested.

(6) The terms for the guaranteed investment contract are commercially reasonable (i.e. have a legitimate business purpose other than to increase the purchase price or reduce the yield of the guaranteed investment contract).

(7) The provider of the investment contract certifies the administrative costs (as defined in Regulations Section 1.148-5(e)) that it pays (or expects to pay) to third parties in connection with the guaranteed investment contract.

(8) The City retains until three years after the last outstanding Bond is retired, (i) a copy of the guaranteed investment contract, (ii) a receipt or other record of the amount actually paid for the guaranteed investment contract, including any administrative costs paid by the City and a copy of the provider's certification described in (7) above, (iii) the name of the person and entity submitting each bid, the time and date of the bid, and the bid results and (iv) the bid solicitation form and, if the terms of the guaranteed investment contract deviates from the bid solicitation form or a submitted bid is modified, a brief statement explaining the deviation and stating the purpose of the deviation.

(h) The employment of such experts and consultants to make, as necessary, any calculations in respect of rebates to be made to the United States of America in accordance with Section 148(f) of the Code is hereby authorized.

SECTION 13. Ordinance a Contract; Severability; Ratification of Actions.

(a) This Ordinance shall constitute a contract between the City and the registered owners of the Bonds and shall not be repealed or amended in any manner which would impair, impede or lessen the rights of the registered owners of the Bonds then outstanding.

(b) If any section, paragraph, subdivision, sentence, clause or phrase of this Ordinance is for any reason held to be illegal or unenforceable, such decision will not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have adopted this Ordinance and each and every other section, paragraph, subdivision, sentence, clause or phrase hereof and authorized the issuance of the Bonds, pursuant hereto irrespective of the fact that any one or more sections, paragraphs, subdivisions, sentences, clauses or phrases of this Ordinance may be held illegal, invalid or unenforceable.

(c) All actions of the officers, employees and agents of the City including the Council which conform to the purposes and intent of this Ordinance and which further the sale and issuance of the Bonds as contemplated by this Ordinance, including retention of consultants and counsel necessary to carry out the purposes of this Ordinance, whether taken before or after adoption of this Ordinance, are hereby ratified, confirmed and approved. The proper officers and agents of the City are hereby authorized and directed to do all such acts and things and to execute and deliver all such documents on behalf of the City as may be necessary to carry out the terms and intent of this Ordinance.

(d) All acts and conditions necessary to be performed by the City or to have been met precedent to and in the issuing of the Bonds in order to make them legal, valid and binding general obligations of the City will at the time of delivery of the Bonds have been performed and have been met, in regular and due form as required by law, and no statutory, charter or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Bonds.

(e) All formal actions of the Council concerning and relating to the passage of this Ordinance were taken in an open meeting of the Council, and all deliberations of the Council and of any committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements.

[SIGNATURES ON FOLLOWING PAGE]

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona, December 16, 2024.

____
Mike Pineda, Mayor

ATTEST:

____
Marcella Sarmiento, City Clerk

APPROVED AS TO FORM:

____
Nicholle Harris, City Attorney

EXHIBIT

[FORM OF BOND]

UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY ("DTC") TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY BOND ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.*

REGISTERED	REGISTERED
NO.	$.......................

UNITED STATES OF AMERICA
STATE OF ARIZONA

CITY OF AVONDALE, ARIZONA
GENERAL OBLIGATION BOND, SERIES 2025

Interest Rate:	Maturity Date:	Dated:	CUSIP:
..................%	July 1, ...	...................., 2025	054314 ......

REGISTERED OWNER: CEDE & CO.*

PRINCIPAL AMOUNT: .... DOLLARS

THE CITY OF AVONDALE, ARIZONA, a body politic and corporate, duly incorporated and existing pursuant to the laws of the State of Arizona (the "City"), for value received, hereby promises to pay to the aforesaid registered owner, or registered assigns, the aforesaid principal amount on the aforesaid maturity date unless earlier redeemed and then on the applicable redemption date, and to pay interest on the principal amount from the date this Bond is dated, at the aforesaid interest rate (computed on the basis of a 360-day year of twelve 30-day months) on each January 1 and July 1 (each an "interest payment date"), commencing ...., ..., to its maturity or its redemption prior to maturity. The principal of and premium, if any, on this Bond are payable upon presentation and surrender hereof at the designated

* Insert only while The Depository Trust Company, New York, New York, is the Securities Depository.

corporate trust office of ...., as the “Bond Registrar and Paying Agent.” Interest on this Bond is payable by check, dated as of the interest payment date, mailed to the registered owner hereof and at the address appearing on the registration books maintained by the Bond Registrar and Paying Agent at the close of business on the 15th day of the month next preceding that interest payment date (the “regular record date”). Any such interest which is not timely paid or duly provided for shall cease to be payable to the registered owner hereof (or of one or more predecessor Bonds) as of the regular record date and shall be payable to the registered owner hereof (or of one or more predecessor Bonds) at the close of business on a special record date for the payment of that overdue interest. The special record date shall be fixed by the Bond Registrar and Paying Agent whenever moneys become available for payment of the overdue interest, and notice of the special record date shall be given to the registered owner of this Bond not less than 10 days prior thereto.

The principal of and interest and premium, if any, on this Bond are payable in lawful money of the United States of America, on the respective dates when principal and interest become due.

This Bond is one of a series of bonds (the “Bonds”) indicated above in the aggregate principal amount of $..........,000 of like tenor except as to amount, maturity date, rate of interest and number. The Bonds represent (i) the fifth installment of an aggregate voted amount of $31,000,000 principal amount approved at a special bond election duly called and held in and for the City on September 8, 1998 (the “1998 Election”), and (ii) the fourth installment of an aggregate voted amount of $70,000,000 principal amount approved at a special bond election duly called and held in and for the City on May 15, 2007 (the “2007 Election”), for the purposes provided in the Question numbered 1 at the 1998 Election and the Question numbered 1 at the 2007 Election. The Bonds are being issued by the City pursuant to an Ordinance of the Mayor and Council of the City, duly adopted prior to the issuance hereof, all of the terms of which are hereby incorporated herein (the “Ordinance”), and pursuant to the Constitution and laws of the State of Arizona relative to the sale and issuance of general obligation bonds of municipalities, and all amendments thereto, the Charter of the City and all other laws of the State of Arizona thereunto enabling.

For the purpose of paying the principal of, interest on and costs of administration of the registration and payment of this Bond, there shall be levied on all taxable property in the City a continuing, direct, annual, ad valorem tax sufficient to pay all such principal, interest and administration costs of and on this Bond as the same become due, such taxes to be levied, assessed and collected at the same time and in the same manner as other taxes of the City are levied, assessed and collected.

The Bonds maturing before and on July 1, ..., are not subject to redemption prior to maturity. The Bonds maturing on and after July 1, ..., are subject to redemption prior to maturity, in whole or in part, on July 1, ..., or any date thereafter, by the payment of a redemption price equal to the principal amount of each such Bond redeemed plus interest accrued to the date fixed for redemption plus a premium (calculated as a percentage of the principal amount of such Bonds to be redeemed) to be computed as follows:

Redemption Dates	Premium
July 1, ..., and January 1, ...	....%
July 1, ..., and January 1, ...	....
July 1, ..., and thereafter	0.0

The Bonds maturing on July 1, ..., shall be redeemed prior to maturity on July 1, in the years and amounts set forth below, by payment of the principal amount of each Bond to be redeemed plus interest accrued to the date fixed for redemption, but without a premium:

Year	Amount
	$

A remaining principal amount of $.....,000 of Bonds maturing on July 1, ..., shall mature on July 1, ...

Not more than seventy-five (75) nor less than sixty (60) days prior to the mandatory redemption date for the Bonds maturing on July 1, ..., the Bond Registrar and Paying Agent shall proceed to select for redemption (by lot in such manner as the Bond Registrar and Paying Agent may determine) from all the Bonds maturing on July 1, ..., outstanding a principal amount of the Bonds maturing on July 1, ..., equal to the aggregate principal amount of the Bonds maturing on July 1, ..., to be redeemed and shall redeem such Bonds maturing on July 1, ..., on the next July 1 and give notice of such redemption.

Notice of redemption of any such Bond will be mailed not more than sixty (60) nor less than thirty (30) days prior to the date set for redemption to the registered owner of such Bond or Bonds being redeemed at the address shown on the registration books for the Bonds maintained by the Bond Registrar and Paying Agent. Failure to properly give such notice of redemption shall not affect the redemption of any such Bond for which notice was properly given.

The Bond Registrar and Paying Agent shall maintain the registration books of the City for the registration of ownership of each Bond as provided in the Ordinance. (The Bond Registrar and Paying Agent may be changed without notice or consent.)

This Bond may be transferred on the registration books upon delivery and surrender hereof to the Bond Registrar and Paying Agent at its designated corporate trust office, accompanied by a written instrument of transfer in form and with guaranty of signature satisfactory to the Bond Registrar and Paying Agent, duly executed by the registered owner of this Bond or his or her attorney-in-fact or legal representative, containing written instructions as to the details of the transfer. No transfer of this Bond shall be effective until entered on the registration books.

In all cases upon the transfer of this Bond, the Bond Registrar and Paying Agent shall transfer the ownership in the registration books and shall authenticate and deliver in the name of the transferee or transferees a new fully registered Bond or Bonds of authorized denominations (except that no Bond shall be issued which relates to more than a single principal maturity) for the aggregate principal amount which the registered owner is entitled to receive at the earliest practicable time in accordance with the provisions of the Ordinance. The City and the Bond Registrar and Paying Agent shall charge the owner of such Bond for every transfer of a Bond, including an amount sufficient to reimburse them for any transfer fee, tax or other charge required to be paid with respect to such transfer and may require that such charge, including such transfer fee, tax or other charge be paid before any such new Bond shall be delivered.

The City and the Bond Registrar and Paying Agent shall not be required to issue or transfer any Bonds during a period beginning with the opening of business on any regular record date and ending with the close of business on the corresponding interest payment date.

This Bond shall not be entitled to any security or benefit under the Ordinance or be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed by the Bond Registrar and Paying Agent.

Pursuant to the Ordinance, payment of all or any part of the Bonds may be provided for by the irrevocable deposit, in trust, of moneys or obligations issued or guaranteed by the United States government ("Defeasance Obligations") or both, which, with the maturing principal of and interest on such Defeasance Obligations, if any, will be sufficient, as evidenced by a certificate or report of an accountant, to pay the principal or redemption price of and interest on such Bonds. Any Bonds so provided for will no longer be outstanding under the Ordinance or payable from ad valorem taxes on taxable property in the City, and the owners of such Bonds shall thereafter be entitled to payment only from the moneys and Defeasance Obligations deposited in trust.

It is hereby certified, recited and declared (i) that all conditions, acts and things required by the Constitution and laws of the State of Arizona to happen, to be done, to exist and to be performed precedent to and in the issuance of this Bond and of the series of which it is one, have happened, have been done, do exist and have been performed in regular and due form and time as required by law, (ii) that the obligation evidenced by the series of Bonds of which this is one, together with all other existing indebtedness of the City, does not exceed any applicable constitutional or statutory limitation and (iii) that due provision has been made for the levy and collection of a direct, annual, ad valorem tax upon taxable property within the City, over and above all other taxes authorized or limited by law, sufficient to pay the principal hereof and the interest hereon as each becomes due.

IN WITNESS WHEREOF, THE CITY OF AVONDALE, ARIZONA, has caused this Bond to be executed in the name of the City by the facsimile signature of the Mayor of the City and such signature of the Mayor of the City to be attested by the facsimile signature of the Clerk of the City.

CITY OF AVONDALE, ARIZONA

By (Facsimile) ....
Mayor

ATTEST:

By (Facsimile) ....
Clerk

APPROVED AS TO FORM:

By (Facsimile) ....
City Attorney

[FORM OF CERTIFICATE OF AUTHENTICATION]

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds described in the within-mentioned Ordinance and is one of the City of Avondale, Arizona General Obligation Bonds, Series 2025.

Date of Authentication: ....

....,
as Bond Registrar and Paying Agent

By..
Authorized Representative

[FORM OF ASSIGNMENT]

ASSIGNMENT

For value received, the undersigned sells, assigns and transfers unto .... the within Bond and irrevocably constitutes and appoints .... attorney to transfer this Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: ....
Signature

Signature Guaranteed:

....
[Insert proper legend]   Signature

Notice: The assignor's signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatsoever.

The following abbreviations, when used in the inscription on the face of the within Bond, shall be construed as though they were written out in full according to applicable laws or regulations.

TEN COM	-	as tenants in common
TEN ENT	-	as tenants by the entireties
JT TEN	-	as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT/TRANS MIN ACT - .... (Cust) Custodian .... (Minor)

under Uniform Gifts/Transfers to Minors Act .... (State)

Additional abbreviations may also be used though not included in the above list

ALL FEES AND COSTS OF TRANSFER
SHALL BE PAID BY THE TRANSFEROR

CERTIFICATION

I hereby certify that the foregoing Ordinance No. 2035-1224 was duly passed and adopted by the Mayor and the Council of the City of Avondale, Arizona, at a regular meeting held on the 16th day of December 2024, and the vote was .... ayes and .... nays and that the Mayor and .... Councilmembers were present thereat.

....
Clerk, City of Avondale, Arizona

CITY COUNCIL REPORT

ITEM NUMBER: 3.h.

SUBJECT: Ordinance 2036-1224 - Authorizing the Purchase of Real Property from Great Lake Funding I Trust

MEETING DATE: 12/16/2024

TO: Mayor and Council

FROM: Nicholle Harris, City Attorney

THROUGH: Ron Corbin, City Manager, (623) 333-1011

REVIEWED: Ron Corbin, City Manager, (623) 333-1011

STRATEGIC PLAN:
This agenda item supports the following Avondale Strategic Outcome Area: Creative and Sustainable Community Development - Avondale is committed to creating a sense of place, a community of residents and local business unified by pride and common values.

PURPOSE:
City Council will consider a request to adopt Ordinance 2036-1224, authorizing the purchase of property located at 518 E Western Avenue, Avondale, AZ 85323, from Great Lake Funding I Trust in the amount of $1,150,000 and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:
518 E Western Avenue is a piece of property that is in the center of the historic Old Town Avondale Business District. Over the past two decades, the city has made significant investments in the design, rehabilitation and new development in the historic old town. This property purchase would further support the goals of further improvements for our residents.

DISCUSSION:
The City has negotiated a purchase price of $1,150,000 for the property located at 518 Western Avenue, Avondale, AZ 85323 with Great Lake Funding I Trust. This purchase will advance the City's goal of continued development in the historic Old Town Avondale Business District.

BUDGET IMPACT:
The total purchase price is $1,150,000 plus the closing cost. Appropriation for the purchase and transaction of the cost are included in the budget.

RECOMMENDATION:
Staff is recommending the City Council adopt Ordinance 2036-1224 authorizing the purchase of 518 E Western Avenue, Avondale, AZ 85323 in the amount of $1,150,000 and authorize the Mayor, City Manager,

City Attorney, and City Clerk to execute the necessary documents. The Council will take appropriate action.

Contact person for document distribution: *Nicholle Harris*

ORDINANCE NO. 2036-1224

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AUTHORIZING THE ACQUISITION, BY DEDICATION, PURCHASE OR CONDEMNATION, OF REAL PROPERTY FOR PUBLIC USE.

WHEREAS, Article I, Section 3 of the Avondale City Charter authorizes the City of Avondale (the "City") to acquire real property in fee simple or any lesser interest, inside or outside its corporate limits for any City purpose, when the public convenience requires it and in accordance with the provisions of State law; and

WHEREAS, the City Council desires to authorize the acquisition of certain real property generally located on Western Avenue between North 5th Street and North 6th Street for public use.

NOW, THEREFORE, BE IT ORDAINED 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 acquisition, by purchase, condemnation or dedication of real property approximately $\pm$ 0.7 acres generally located on Western Avenue between North 5th Street and North 6th Street, in Avondale, Arizona as legal described in Exhibit A, attached hereto and incorporated herein by reference, is hereby authorized.

SECTION 3. If any provision of this Ordinance is for any reason held by any court of competent jurisdiction to be unenforceable, such provision or portion hereof shall be deemed separate, distinct and independent of all other provisions and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 4. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps and to execute all documents necessary to carry out the purpose and intent of this Ordinance.

[SIGNATURES ON FOLLOWING PAGE]

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona, December 16, 2024.

Mike Pineda, Mayor

ATTEST:

Marcella Sarmiento, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A

TO

ORDINANCE NO. 2036-1224

[Legal Description]

A.P.N: 500-20-147A

The West half of the Southeast quarter of the Southwest quarter of the Southeast quarter of the Southeast quarter of Section 10. Township 1 North, Range 1 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona: Except the East 60 feet.

Avondale

CITY COUNCIL REPORT

ITEM NUMBER: 4.a.

SUBJECT: Proclamation - Recognition of Councilmember Veronica Malone

MEETING DATE: 12/16/2024

TO: Mayor and Council

FROM: Marcella Sarmiento, City Clerk

THROUGH: Tracy Stevens, Assistant City Manager, (623) 333-1014

REVIEWED: Ron Corbin, City Manager, (623) 333-1011

STRATEGIC PLAN:
n/a

PURPOSE:
The City Council will recognize Councilmember Veronica Malone for her service as a member of the Avondale City Council from 2017 - 2024 and present a Certificate of Appreciation to Terrance Malone for his unselfish "behind the scenes" service to the City of Avondale. This item is for discussion only.

BACKGROUND:
Veronica Malone answered the call to service in 2017, when she was elected as Councilmember of the City of Avondale at the August 30, 2016 Election. Veronica Malone has served as Councilmember and will conclude her term on December 31, 2024.

DISCUSSION:
The City of Avondale hereby wishes to express its sincere gratitude and appreciation to Councilmember Veronica Malone for her 8 years of leadership and dedication to the City of Avondale.

BUDGET IMPACT:
This item does not have a budget impact.

RECOMMENDATION:
This item is for discussion only.

Contact person for document distribution:

Avondale

Proclamation Honoring Councilmember Veronica Malone

A proclamation of the Council of the City of Avondale, Arizona, honoring Councilmember Veronica Malone for her dedicated service to the Avondale community as a City Councilmember.

WHEREAS, Veronica Malone answered the call to service in 2016, when she was elected as Councilmember of the City of Avondale at the August 30, 2016 Election; and

WHEREAS, Veronica Malone served as Vice Mayor from January 4, 2021 to January 9, 2023, where she performed the duties of the Mayor during absences of the Mayor; and

WHEREAS, Veronica Malone was re-elected as Councilmember of the City of Avondale at the August 4, 2020 Election; and

WHEREAS, Veronica Malone has been a pillar of civic engagement in the Avondale community having served on the Contributions Assistance Review Subcommittee; as Vice President and member of the La Joya Football Booster Club; as a volunteer in the children's ministry at Christ Church of the Valley; and as a proud graduate of the Avondale Citizens Leadership Academy, Avondale Citizens Police Academy, Avondale Citizens Fire Academy, Hispanic Leadership Institute (HLI) West and Leadership West Program; and

WHEREAS, Veronica Malone served as a member of the Luke West Valley Council; National League of Cities (NLC) Community and Economic Development; NLC Council on Youth, Education, and Families; Arizona League Policy Committee on Public Safety, Military Affairs and Courts; Arizona League Policy Committee on Neighborhoods, Sustainability and Quality of Life; National Association of Latino Elected and Appointed Officials; Hispanic Elected Local Officials; Women in Municipal Government; Valley Metro Regional Public Transportation Authority (RPTA); and Southwest Valley Chamber of Commerce Board of Directors; and

WHEREAS, Veronica Malone will be greatly missed and warmly remembered as Helpful, Kind and Professional by those who had the privilege of working with her.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, that the City of Avondale hereby wishes to express its sincere gratitude and appreciation to Veronica Malone for her 8 years of leadership and dedication to the City of Avondale.

Proclaimed this 16th day of December 2024.

______________________________ **Attest**: ______________________________

Mike Pineda, Mayor Marcella Sarmiento, City Clerk

CITY COUNCIL REPORT

ITEM NUMBER: 4.b.

SUBJECT: Proclamation - Recognition of Mayor Kenneth Weise

MEETING DATE: 12/16/2024

TO: Mayor and Council

FROM: Marcella Sarmiento, City Clerk

THROUGH: Tracy Stevens, Assistant City Manager, (623) 333-1014

REVIEWED: Ron Corbin, City Manager, (623) 333-1011

STRATEGIC PLAN:
n/a

PURPOSE:
The City Council will recognize prior Mayor Kenneth Weise for his service as a member of the Avondale City Council from 2006 - 2024 and present a Certificate of Appreciation to Shari Weise for her unselfish "behind the scenes" service to the City of Avondale. This item is for discussion only.

BACKGROUND:
Kenn Weise answered the call to service in 2006, when he was appointed as Councilmember of the City of Avondale at the January 30, 2006 City Council meeting. Kenneth Weise served as Councilmember until he was appointed Mayor at the June 2, 2014, City Council meeting.

Kenneth Weise served as Mayor until his resignation on October 13, 2024.

DISCUSSION:
The City of Avondale hereby wishes to express its sincere gratitude and appreciation to Mayor Kenneth Weise for over 18 years of leadership and dedication to the City of Avondale.

BUDGET IMPACT:
This item does not have a budget impact.

RECOMMENDATION:
This item is for discussion only.

Contact person for document distribution:

Avondale

Proclamation Honoring Mayor Kenneth Weise

A proclamation of the Council of the City of Avondale, Arizona, honoring Mayor Kenneth "Kenn" Weise for his dedicated service to the Avondale community as both a City Councilmember and Mayor.

WHEREAS, Kenn Weise answered the call to service in 2006, when he was appointed as Councilmember of the City of Avondale at the January 30, 2006 City Council meeting; and

WHEREAS, Kenn Weise was elected as Councilmember of the City of Avondale at the September 11, 2007 Election and was re-elected at the August 28, 2012 Election; and

WHEREAS, Kenn Weise was appointed Mayor of the City of Avondale at the June 2, 2014 City Council meeting; and

WHEREAS, Kenn Weise was elected as Mayor of the City of Avondale at the November 8, 2016 Election and was re-elected at the August 4, 2020 Election; and

WHEREAS, Kenn Weise has been a pillar of civic engagement in the Avondale community having served on the Board of Elders at Trinity Lutheran Church and as a volunteer with local community organization and events; and

WHEREAS, Kenn Weise served on the Maricopa Association of Governments (MAG) Regional Council as Chair; MAG Regional Council Executive Committee; MAG Transportation Policy Committee; MAG Economic Development Committee; Greater Phoenix Economic Council's Board of Directors; Member of the National League of Cities; and Member of the League of Cities Resolution Committee; and

WHEREAS, Kenn Weise will be greatly missed and warmly remembered as Helpful, Kind and Professional by those who had the privilege of working with him.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, that the City of Avondale hereby wishes to express its sincere gratitude and appreciation to Mayor Kenn Weise for over 18 years of leadership and dedication to the City of Avondale.

Proclaimed this 16th day of December 2024.

____________________________ **Attest**: ____________________________

Mike Pineda, Mayor Marcella Sarmiento, City Clerk

CITY COUNCIL REPORT

ITEM NUMBER: 7.a.

SUBJECT: Termination Agreement and Mutual Release with Diversified Partners, LLC

MEETING DATE: 12/16/2024

TO: Mayor and Council

FROM: Nicholle Harris, City Attorney

THROUGH: n/a

REVIEWED: Ron Corbin, City Manager, (623) 333-1011

STRATEGIC PLAN:
N/A

PURPOSE:
City Council will consider a request to approve the Termination Agreement and Mutual Release with Diversified Partners, LLC in the amount of $75,000 and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:
On August 21, 2023, the City Council authorized the sale of certain real property located at the northeast corner of Avondale Blvd and The BLVD. On September 19, 2023, the City entered into a Purchase and Sales Agreement with Diversified Partners, LLC. Under the Agreement, Diversified Partners was to purchase the property and develop a freestanding Class A type restaurant in compliance with certain development milestones and timing requirements.

DISCUSSION:
On August 26, 2024, the City issued a Notice of Default to Diversified Partner for failure to timely meet one of the development milestones identified in the Purchase and Sales Agreement. Diversified Partners denied all allegations of breach. In response to the City's request to terminate the Purchase and Sales Agreement, Diversified Partners alleged the City breached its promises under the contract and demanded reimbursement of costs incurred. The City and Diversified Partners have negotiated this Termination Agreement and Mutual Release to terminate the Purchase and Sales Agreement, and to settle their developing dispute related to the sale and development of the Property.

BUDGET IMPACT:
$75,000 Settlement Payment

RECOMMENDATION:
Staff recommends City Council approve the Termination Agreement and Mutual Release with Diversified Partners, LLC in the amount of $75,000 and authorize the Mayor, or City Manager, City Attorney and City Clerk

to execute the necessary documents.

Contact person for document distribution: *Nicholle Harris*

TERMINATION AGREEMENT AND MUTUAL RELEASE OF ALL CLAIMS

This Termination Agreement and Mutual Release of All Claims ("Termination and Release") is entered into as of December 16, 2024, by and between the City of Avondale, an Arizona Municipal Corporation (the "City"), and Diversified Partners, LLC, an Arizona limited liability company ("DP"). Collectively, the City and DP shall be referred to as the "Parties." Any capitalized terms used herein by not defined herein shall have the same meaning as defined in the Purchase and Sale Agreement for Property Located at the Northeast Corner of Avondale Boulevard and the Blvd, Avondale, Maricopa County, Arizona, having an Effective Date of September 19, 2023, and its duly executed amendments.

RECITALS

A. The Parties entered into a Purchase and Sale Agreement for Property Located at the Northeast Corner of Avondale Boulevard and the Blvd, Avondale, Maricopa County, Arizona, having an Effective Date of September 19, 2023 (along with its' executed amendments, the "PSA"). The PSA contemplates the City's sale to DP of real property in the high-profile area called The BLVD, also known as APN 102-57-262 (the "Property"), in exchange for DP developing the Property into a free-standing Class A type restaurant in compliance with certain development milestones and timing requirements.

B. On August 26, 2024, the City issued a Notice of Default to DP alleging DP failed to timely meet one of the development milestones identified in the PSA. On August 26, 2024, DP responded denying it was in default. On November 23, 2024, in response to the City's request to terminate the contract, DP issued a formal demand to the City alleging breach of the implied covenant of good faith and fair dealing, and promissory estoppel. The Parties negotiated this Termination and Release to terminate the PSA and to settle their developing dispute related to the sale and development of the Property.

D. The Parties have engaged in good faith negotiations regarding the dispute and now desire to terminate the PSA and fully compromise and settle their outstanding differences, disputes, and all claims arising out of or with respect to the PSA and the sale or development of the Property.

RELEASE

NOW, THEREFORE, In consideration of the foregoing introduction and recitals, which are incorporated herein by reference, the following mutual promises and conditions, and for good and valuable consideration, the receipt and sufficiency of which each of the Parties acknowledges, the Parties hereby agree as follows:

1. **Release of All Claims.**

(a) Release by DP. DP, on behalf of itself, its agents, employees, managers, representatives, assigns, and successors in interest, and all persons acting by, through, under, or in concert with his, and each of them, hereby releases and forever discharges the City, together with its and their past, present, and future officers, directors, shareholders, interest holders, members, partners, attorneys, agents, employees, managers, representatives, assigns, and successors in interest, and all persons acting by, through, under or in concert with them, and each of them, from all known and unknown charges, complaints, claims, grievances, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties, fees, wages, medical costs, pain and suffering, mental anguish, emotional distress, expenses (including attorneys' fees and costs actually incurred), and punitive damages, of any nature whatsoever, whether at law or in equity, or known or unknown, which DP has, or may have had, against the City of Avondale, whether or not apparent or yet to be discovered, or which may hereafter develop, for any acts or omissions related to or arising from:

(i) The PSA; and

(ii) the development of the Property; and

(iii) Any agreement between the Parties, other than this Termination and Release; and

(iv) Any other matters between the Parties, other than this Termination and Release, pertaining to the Property.

This Termination and Release resolves any claim for relief that has or could have been alleged by DP against the City, no matter how characterized, including, without limitation, general damages, special damages, compensatory damages, damages for breach of contract, bad faith damages, reliance damages, liquidated damages, damages for humiliation and embarrassment, punitive damages, other costs, and attorneys' fees related to or arising from the PSA or the development of the Property.

DP has investigated the facts pertaining to this Termination and Release and the released claims as he deems necessary. DP is aware that it may hereafter discover facts in addition to, contrary to, or different from those it now knows or believes to be true with respect to the matters set forth herein. Nevertheless, it is the intention of DP to fully, finally, and forever settle and release all claims of any kind or nature whatsoever that were in existence as of the date of this Termination and Release. In furtherance of the Parties' intent, the release in this Termination and Release shall remain in full and complete effect notwithstanding the discovery or existence of any additional, contrary, or different facts.

(b) **Release by City of Avondale.** The City, on behalf of itself, its affiliates, and assigns, and its and their past, present, and future officers, directors, employees, managers, representatives, assigns, and successors in interest, and all persons acting by, through, under, or in concert with them, and each of them, hereby releases and forever discharges DP, together with its attorneys, agents, employees, managers, representatives, assigns, and successors in interest, and all persons acting by, through, under or in concert with them, and each of them, from all known and unknown charges, complaints, claims, grievances, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties, fees, wages, medical costs, pain and suffering, mental anguish, emotional distress, expenses (including attorneys' fees and costs actually incurred), and punitive damages, of any nature whatsoever, whether at law or in equity, or known or unknown, which the City has, or may have had, against DP, whether or not apparent or yet to be discovered, or which may hereafter develop, for any acts or omissions related to or arising from:

(i) The PSA; and

(ii) the development of the Property; and

(iii) Any agreement between the Parties, other than this Termination and Release, pertaining to the Property.

The City has investigated the facts pertaining to this Termination and Release and the released claims as it deems necessary. The City is aware that it may hereafter discover facts in addition to, contrary to, or different from those it now knows or believes to be true with respect to the matters set forth herein. Nevertheless, it is the intention of the City to fully, finally, and forever settle and release all claims of any kind or nature whatsoever that were in existence as of the date of this Termination and Release. In furtherance of the Parties' intent, the release in this Termination and Release shall remain in full and complete effect notwithstanding the discovery or existence of any additional, contrary, or different facts.

2. **Termination of the PSA.** Beginning on the date of this Termination and Release, the PSA shall be cancelled and terminated with neither party having any rights or obligations thereunder, except as described herein.

3. **Escrow Instructions to Release Earnest Money to DP.** The Parties intend that this Termination and Release will be escrow instructions to the Escrow Agent to terminate the Escrow and disburse to DP the Earnest Money Deposit made by DP in the amount of ten thousand dollars ($10,000.00) and any interest accrued thereon.

4. **Settlement Payment.**

(a) **Payment for Alleged Costs.** Subject to the terms and conditions of this Termination and Release, the City agrees to pay DP, and DP agrees to accept the total sum of Seventy-Five Thousand Dollars ($75,000.00) (the "Settlement Payment") as the full and final settlement and satisfaction of all claims relating to the sale and development of the Property and the PSA, including all claims raised, or which could have been raised, in litigation. The Settlement Payment shall be:

(i) Paid by Check with U.S. Funds; and

(ii) Payable to RAJ Law Pllc and Diversified Partners, LLC, an Arizona limited liability company; and

(iii) Delivered to DP's counsel at the following address: Rafat Abdeljaber, Esq., 5050 N. 40th Street Ste 220 Phoenix, AZ 85018; and

(iv) Made no later than fifteen (15) business days after counsel for DP delivers an executed copy of this Termination and Release to counsel for the City.

(b) **Attorneys' Fees and Costs.** The Parties acknowledge and agree that they are solely responsible for paying any attorneys' fees and costs they incurred in connection with the PSA and any claims alleged in connection therewith, including, but not limited to, attorneys' fees and costs incurred in connection with the negotiation of this Termination and Release.

(c) DP shall be solely responsible for and is legally bound to make payment of any taxes determined to be due and owing to any federal, state, local, or regional taxing authority as a result of the Settlement Payment.

(d) DP does not rely upon, any representations regarding the tax treatment of the sums paid pursuant to this Termination and Release.

(e) DP agrees to indemnify and hold the City harmless in the event that any governmental taxing authority asserts any claim for unpaid taxes, failure to withhold taxes, penalties, or interest based upon the payment of the Settlement Payment.

(f) **Indemnification.**

(i) DP warrants and represents that it will satisfy and pay all existing liens, claims, or right of lien any entity or individual may hold against any proceeds, recovery or right of recovery received in settlement from the City related to or arising from the PSA or the development of the Property. DP specifically agrees to satisfy from the proceeds or otherwise, all liens or subrogated interests it alleges resulted from the PSA or development of the Property. DP agrees to indemnify and hold harmless the City and its employees from any and all damages, costs (including court costs), and fees (including attorneys' and legal fees) that the City incurs or suffers in connection with or as a result of DP's failure to obtain any release of lien or liability relating to or arising from the PSA or the development of the Property.

(ii) **Reporting Requirements.** DP shall be solely responsible for making all required reports of the details of this settlement to state and local government agencies.

(g) The Parties agree and acknowledge that the amounts being paid under this agreement represent a settlement of disputed claims. These amounts are not intended, nor shall they be construed, as reimbursement or payment for costs, expenses, attorneys' fees, or any other similar obligations incurred by DP, but solely to resolve the claims between the Parties. All references to taxes being owed herein are not meant to characterize the payment hereunder as taxable income but are listed solely for purposes of defining the respective obligations and liabilities of the Parties in the event of any such assertion by any federal, state, local, or regional taxing authority, and not meant to limit the defenses to such assertion by DP.

5. **Representations and Warranties.**

(a) **No Outstanding or Known Future Claims or Causes of Action.** Each Party represents and warrants that it has not filed with any governmental agency or court any type of action or report against the other Party and currently knows of no existing act or omission by the other Party that may constitute a claim or liability excluded from the released claims set out in Section 1, above.

(b) **No Assignment or Transfer of Claims.** Each Party represents and warrants that it is the rightful owner of and has not encumbered, assigned, or transferred, nor will it in the future attempt to encumber, assign, or transfer any claim for relief or cause of action released herein.

(c) **Parties' Authority to Settle.** Each Party represents and warrants that they have full authority to enter into, deliver, and perform under this Agreement, and that all acts and actions have been taken to grant such authority, and that no third-party consent, which has not already been obtained, is required.

(d) **Signatories' Authority to Execute Termination and Release.** Each signatory to this Termination and Release represents and warrants that they are authorized to execute this Termination and Release on behalf of the Party for whom they executed this Termination and Release.

(e) **No Violation of By-laws, Covenants, or Restrictions.** Each Party warrants and represents that the Party's execution of this Termination and Release is not in violation of any by-law, covenants, and other restrictions placed upon them by their respective entities.

6. **Cooperation.**

Each Party agrees to take all actions and to make, deliver, sign, and file any other documents and instruments necessary to carry out the terms, provisions, purpose, and intent of this Termination and Release.

7. **No Admission of Liability.**

The Parties acknowledge that this Termination and Release represents a compromise and final settlement of disputed claims and agree that the performance of the conditions and provisions of this Termination and Release, including the payment and acceptance of the Settlement Payment, is not to be construed as an admission of any liability or wrongdoing whatsoever by any Party to this Termination and Release.

8. **Termination and Release is Legally Binding.**

The Parties intend this Termination and Release to be legally binding upon and shall inure to the benefit of each of them and their respective parents, subsidiaries, affiliates, predecessors, successors, assigns, executors, administrators, heirs, and estates.

9. **Entire Agreement.**

This Termination and Release, including the recitals, constitutes the entire agreement and understanding of the Parties and supersedes all prior negotiations or agreements, proposed or otherwise, written or oral, concerning the subject matter hereof. Each Party acknowledges that in entering into this Termination and Release, it has not relied on any promise, representation, or warranty not contained in this Termination and Release.

10. **Modification.**

No modification of this Termination and Release shall be binding unless in writing and signed by each of the Parties hereto.

11. **Interpretation, Severability, and Enforcement.**

(a) **Interpretation.** The headings in this Termination and Release are purely for convenience and are not to be used as an aid in interpreting its terms. This Termination and Release shall not be construed against either Party as the author or drafter of the Termination and Release.

(b) **Severability.** Should any provision of this Termination and Release be declared or be determined by any court to be illegal, invalid, or unenforceable, the validity of the remaining parts, terms, or provisions shall not be affected thereby, and the illegal, invalid, or unenforceable part, term, or provision shall be deemed not to be a part of this Termination and Release.

12. **Choice of Law.**

(a) **Choice of Law.** This Termination and Release and all related documents, including all exhibits attached hereto, and all matters arising out of or relating to this Termination and Release, whether stated in contract, tort, or statute, are governed by and construed in accordance with the laws of the State of Arizona, Maricopa County (including its statutes of limitation and applicable state choice of law statute(s)), without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of Arizona

13. **Reliance on Own Counsel.**

In entering into this Termination and Release, each Party acknowledges that:

(a) They had the opportunity to seek and rely upon the legal advice of attorneys of their own choosing.

(b) They fully understand and voluntarily accept the Termination and Release's terms based on the consideration set forth in this Termination and Release and not on any other promises or representations by the other Party or any attorney or other agent or representative of the other Party.

14. **Non-Disparagement**

The Parties agree that, unless required to do so by legal process, they (and their respective officers and directors) will not make any disparaging statements or representations, either directly or indirectly, whether orally or in writing, by word or gesture, to any person whatsoever, about the other Party or any person or entity affiliated with the other Party.

For purposes of this paragraph, a disparaging statement or representation is any communication which, if publicized to another, would cause or tend to cause the recipient of the communication to question the business condition, integrity, competence, good character, or product quality of the person or entity to whom the communication relates. This non-disparagement provision is material to this Termination and Release and its violation shall constitute a breach of this Termination and Release.

INTENDING TO BE LEGALLY BOUND, each of the Parties hereto has caused this Termination and Release to be executed as of the last date set forth below.

CITY OF AVONDALE, ARIZONA	**DIVERSIFIED PARTNERS, LLC**
____________________________	By:________________________________
Nicholle Harris, City Attorney	
	Its:________________________________
Date: ___________________________	Date:__________________________