

**MAYOR AND COUNCIL PUBLIC MEETING NOTICE
SPECIAL MEETING - FEBRUARY 22, 2023 AT 5:30 PM**



Pursuant to A.R.S. Sec. §38-431.02, notice is hereby given to the members of the City Council and to the general public that the Mayor and Council will hold a **SPECIAL MEETING at 5:30 p.m., on WEDNESDAY, FEBRUARY 22, 2023**, meeting is open to the public, at City Hall - Council Chamber, 425 Tenth Street, Douglas, AZ 85607.

If you would like to address the City Council regarding any item on the agenda, please contact the City Clerk at (520) 417-7301 or via email at alma.andrade@douglasaz.gov to complete your request to speak form.

Members of the City of Douglas Council will attend either in person or by telephone.

If authorized by a majority vote of the Council of the City of Douglas, the Council may adjourn the meeting at any time and move into Executive Session for legal advice on any agenda item, pursuant to A.R.S. § 38-431.03. The Executive Session will be held immediately after the vote to go into Executive Session and will not be open to the public.

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

AGENDA - A copy of the agenda will be available at the office of the City Clerk at 425 Tenth Street, Douglas, Arizona at least twenty-four hours in advance of the meeting.

CONSENT AGENDA - ORDER, DEFERRAL AND ACCELERATION OF AGENDA ITEMS, MAY OCCUR, ALONG WITH VOTE WITHOUT DISCUSSION: Information concerning the consent items has been forwarded to each Council Member prior to this meeting for study and is on file at the City Clerk's Office in City Hall. Unless some other member of the audience or Council Member has a question concerning an item and asks that it be withdrawn from the consent list, the items OCCUR, ALONG WITH VOTE WITHOUT DISCUSSION: are approved at one time by the City Council. The action taken by the Council in approving consent items is set forth in the explanation of the individual items.

MEMBERS OF THE PUBLIC can submit their questions for the Call to the Public section by email to alma.andrade@douglasaz.gov by Tuesday, FEBRUARY 21, 2023, by 5:00 p.m. in order to be read during meeting. If a Call to the Public has been sent to the City Clerk, please call (346) 248-7799 at 6:00 p.m. and enter Meeting ID: 794-497-8929, Passcode: 9371 when prompted, and wait to be called upon to participate. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.

PUBLIC NOTICE - Live Stream and Audio/Video recording may be in progress during all public portions of Council meetings held in these Chambers. If you are in Council Chambers during the Council meeting, you are consenting to be recorded and live-streamed.

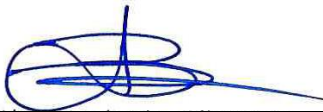
Dated this 17th day of February 2023.

AGENDA

SPECIAL MEETING, FEBRUARY 22, 2023

1. **CALL TO ORDER.**
2. **ROLL CALL.**
3. **PERSONS WISHING TO ADDRESS THE COUNCIL IN WRITING OR VERBALLY ON ANY ITEM NOT ON THE AGENDA.**
4. **DISCUSSION/DECISION on APPROVALS.**
 - A. **SECOND READING of ORDINANCE NO. 23-1160**, an Ordinance of the Mayor and Council of the City of Douglas, Cochise County, Arizona, **AUTHORIZING** the **SALE** of a **VACANT** parcel of land located on the north side of 11th Street approximately 820 feet west of Pan American Avenue, with Assessor's parcel number 409-06-020T to **COX COMMUNICATIONS ARIZONA LLC**, pursuant to terms entered into by the parties; establishing severability of components of Ordinance; and establishing an effective date thereof.
 - B. **FIRST READING of ORDINANCE NO. 23-1161**, an Ordinance of the Mayor and Council of the City of Douglas, Cochise County, Arizona, **AUTHORIZING** the City Manager to **EXECUTE** and **DELIVER** an **INSTALLMENT LOAN AGREEMENT** with **BAYSTONE GOVERNMENT FINANCE**, a division of KS Statebank for purposes of **FINANCING** a **WHEEL LOADER** for the City of Douglas wastewater treatment plant; authorizing the taking of all other actions necessary to the consummation of the transactions contemplated by this Ordinance; establishing severability of components of Ordinance; and declaring an emergency.
 - C. **PRESENTATION/DISCUSSION on ZONING CODE TEXT and MAP AMENDMENTS.**
5. **ADJOURNMENT.**

Posted at City Hall on Friday, February 17, 2023, @ 5:15 p.m. by:



Alma Andrade, City Clerk



Deputy City Clerk

Members of the City of Douglas Council will attend either in person or by telephone.

PURSUANT TO THE AMERICANS WITH DISABILITIES ACT (ADA), THE CITY OF DOUGLAS DOES NOT, BY REASON OF A DISABILITY, EXCLUDE FROM PARTICIPATION IN OR DENY BENEFITS OF SERVICES, PROGRAMS OR ACTIVITIES OR DISCRIMINATE AGAINST ANY QUALIFIED PERSON WITH A DISABILITY. INQUIRIES REGARDING COMPLIANCE WITH ADA PROVISION, ACCESSIBILITY OR ACCOMMODATION CAN BE DIRECTED TO RENE MOLINA WITHIN 72 HOURS AT TELEPHONE NO. (520) 417-7311, PHONE/TDD/TTY NO. (520) 364-1582, FAX (520) 417-7174, 425 TENTH STREET, DOUGLAS, ARIZONA 85607

SUBMITTED BY: Luis Pedroza, Deputy City Manager/City Treasurer

MANAGEMENT TEAM REVIEW: Ana Urquijo, City Manager

FOCUS AREA: Advanced Infrastructure Development and Improvement

ORGANIZATIONAL IMPROVEMENTS: EnterTextHere

SUBJECT: **SECOND READING of ORDINANCE NO. 23-1160**, an Ordinance of the Mayor and Council of the City of Douglas, Cochise County, Arizona, **AUTHORIZING** the **SALE** of a **VACANT** parcel of land located on the north side of 11th Street approximately 820 feet west of Pan American Avenue, with Assessor's parcel number 409-06-020T to **COX COMMUNICATIONS ARIZONA LLC**, pursuant to terms entered into by the parties; establishing severability of components of Ordinance; and establishing an effective date thereof.

EXECUTIVE SUMMARY:

The attached purchase and sale agreement for your consideration is for the sale of vacant parcel 409-06-020T located on the north side of 11th Street approximately 820 feet west of Pan American Avenue is between the City of Douglas and Cox Communications Arizona LLC.

BACKGROUND:

On August 10, 2022, the City went out to bid for the sale of this vacant 1.99 acre parcel, located in the heavy industrial zoning of 11th Street west of Pan American Avenue. The City received one bid from Cox Communications Arizona LLC for \$130,000. Cox plans to utilize this space to construct a hub to power its new fiber conversion currently underway in the City.

The attached purchase agreement contains conditions for the sale. The buyer shall be responsible for all closing costs. There is a \$1,000 earnest money deposit required applied to the purchase price. All sale price amount shall be paid upon closing. There is no city financing included. The bid price is consistent with the appraisal conducted on 12/31/21.

DISCUSSION:

Staff recommends approval of the purchase agreement and to execute all pertinent documentation for the sale of this City property.

FISCAL IMPACT:

\$130,000 to go into the Capital Projects Fund

Fiscal Year: 2022/2023

Amount Requested:

Budgeted: Y / N

Account (s):

“...I MOVE THAT THE MAYOR AND COUNCIL APPROVE THE SECOND READING OF ORDINANCE NO. 23-1160 BY NUMBER AND TITLE ONLY.”

ORDINANCE NO. 23-1160

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AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF DOUGLAS, COCHISE COUNTY, ARIZONA, AUTHORIZING THE SALE OF A VACANT PARCEL OF LAND LOCATED ON THE NORTH SIDE OF 11TH STREET APPROXIMATELY 820 FEET WEST OF PAN AMERICAN AVENUE, WITH ASSESSOR’S PARCEL NUMBER 409-06-020T TO COX COMMUNICATIONS ARIZONA LLC, PURSUANT TO TERMS ENTERED INTO BY THE PARTIES; ESTABLISHING SEVERABILITY OF COMPONENTS OF ORDINANCE; AND ESTABLISHING AN EFFECTIVE DATE THEREOF.

WHEREAS, Article I, Section 3 (A) of the City Charter empowers the City to acquire real property for any City purpose and to sell or otherwise dispose of real property in the manner, for such consideration and upon such conditions as may be determined by the City Council; and

WHEREAS, Article VII, Section 5 (12) of the City Charter provides that the acquisition, sale, lease or exchange of real property shall be by ordinance; and

WHEREAS, the Mayor and Council find that it is in the best interest of the City of Douglas to sell a vacant parcel of land located on the north side of 11th Street approximately 820 feet west of Pan American Avenue, with Assessor’s Parcel Number 409-06-020T in Douglas, Cochise County Arizona to Cox Communications Arizona LLC an Arizona Limited Liability Corporation, for a total purchase price of \$130,000 per the terms of the accepted offer in the Purchase and Sale Agreement, which is attached and incorporated herein by reference; and

WHEREAS, the Mayor and Council find that the sale of the vacant real property is in the best interest of the City pursuant to the terms and conditions of the terms described in the Purchase and Sale Agreement as entered into by the parties.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the City of Douglas, Arizona, as follows:

Section 1. The City is authorized to sell to Cox Communications Arizona LLC:

Legal Descriptions: SUR TO A DEPTH OF 500' COM AT NW COR OF SEC 13 THN S0DEG 30MIN W453.17' S89DEG 30MIN E33' S73DEG 32MIN E901.67' TO POB THN S73DEG 21MIN E238.75' S16DEG 38MIN W364.94' N73DEG 21MIN W238.75' N16DEG 38MIN E364.94' TO POB SEC 13 24-27 2.00AC identified as Assessor’s Parcel Number 409-06-020T in Douglas, Cochise County, Arizona, for a total purchase price of \$130,000.00 per the terms of the accepted offer in the Purchase and Sale Agreement, plus any related costs associated with closing.

Section 2. Approving the terms of the accepted offer in the Purchase and Sale Agreement, attached hereto and incorporated herein by reference.

Section 3. The City Manager and the City Clerk are authorized and directed to sign and execute all documents necessary to consummate the sale of the subject property.

Section 4. This ordinance shall be effective thirty (30) days after final approval and adoption by the Mayor and Council.

Section 5. Severability. If any chapter, section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance

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PASSED AND ADOPTED by the Mayor and Council of the City of Douglas, Arizona, this 22nd day of February 2023.

Donald C. Huish, Mayor

Attest:

Approved as to form:

Alma Andrade, City Clerk

Denis Fitzgibbons, City Attorney

Prepared by:
Luis Pedroza, Deputy City Manager

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement ("Agreement") is made and entered into this _____ day of _____, 2023 (the "Effective Date") by and between the City of Douglas, an Arizona municipal corporation ("Seller"), and Cox Communications Arizona, LLC, an Arizona limited liability corporation (the "Buyer"), on the following terms and conditions:

1. Sale and Purchase. Seller agrees to sell, and Buyer agrees to purchase that certain real property consisting of approximately 1.99 acres located on the north side of 11th Street approximately 820 feet west of Pan American Avenue, Douglas, Cochise County, Arizona, Assessor's Parcel No. 409-06-020T, legally described on Exhibit A attached hereto, together with all rights and easements appurtenant thereto (the "Property").

2. Escrow and Title Company. The Seller and Buyer shall open an escrow ("Escrow") with Pioneer Title Agency, 1065 F Ave Suite #6, Douglas, Arizona 85607, Attn: Candy Romo ("Title Company") to facilitate the consummation of the sale of the Property. This Agreement shall also serve as escrow instructions to the Title Company. The Seller and Buyer shall provide additional instructions reasonably requested by the Title Company in connection with opening the Escrow or otherwise facilitating the consummation of the sale of the Property, not inconsistent with the terms of this Agreement. In the event of any conflict or inconsistency between any additional Escrow Instructions requested by Title Company and this Agreement, the provisions of this Agreement shall prevail.

3. Purchase Price. The purchase price ("Purchase Price") that Buyer agrees to pay Seller for the Property shall be the sum of One Hundred Thirty Thousand and No/100 Dollars (\$130,000.00). The Purchase Price shall be paid as follows:

(a) Within five (5) days after the execution of this Agreement by Buyer and Seller, Buyer shall deposit with the Escrow Agent the sum of One Thousand and No/100 Dollars (\$1,000.00) as a down payment ("Down Payment") on the Purchase Price. If the transaction contemplated hereby is consummated in accordance with the terms and provisions hereof, the Down Payment shall be applied toward the Purchase Price at Closing.

(b) The balance of the Purchase Price shall be paid in cash or immediately available funds ("Cash Payment"), on or before the Close of Escrow.

4. Escrow Opening and Closing.

4.01 Opening of Escrow. The Title Company shall sign and date this Agreement on the space provided at the end of this Agreement, indicating that Escrow has been opened as of such date ("Opening of Escrow"), which date shall be the date at which Title Company has a fully executed Agreement and the Down Payment. The Title Company shall provide a copy of the fully executed Agreement to the Seller and Buyer within five (5) days of the Opening of Escrow.

4.02 Closing. The closing of this transaction (the "Closing" or "Close of Escrow") shall occur within thirty (30) days after the expiration of the Feasibility Period (defined in Section 6.02(b)) unless an extension is otherwise agreed to in writing by Seller. If the Closing

is delayed as a result, directly or indirectly, of Buyer's actions or inactions, and not by any action on the part of the City, the City may grant and extension and require Buyer to pay either (a) a liquidated damages assessment of \$200 per day for each day the Closing is extended; or (b) interest on the balance of the Purchase Price, whichever is greater. Interest shall be computed based on the yield of a 10-year United States Treasury maturities as reported by the Federal Reserve Board in Federal Reserve Statistical Release H.15 plus 1 ½ % rounded to the nearest 1/8% as of the date of this Agreement. Seller may impose additional terms and conditions to grant an extension of Closing.

5. Title; Survey.

5.01 Status of Title. Within ten (10) days after the Opening of Escrow, Title Company shall provide Buyer, at Seller's expense, a commitment for owner's policy of title insurance (the "Title Commitment") for the Property in the amount of the Purchase Price, issued by the Title Company disclosing all matters of record and other matters that Title Company has knowledge relating to the title to the Property, and a legible copy of each of the instruments and documents referred to in the Title Commitment, including those documents referenced as exceptions in the Title Commitment. Buyer shall have thirty (30) days after its receipt of the Title Commitment and the Survey (as hereinafter defined), or five (5) business days after the receipt of any updates or amendment thereto which causes the Title Commitment to disclose a new title exception that was not created or permitted by Buyer (each, a "Title Commitment Update"), to object in writing to Seller and Title Company to any matter shown thereon and any matters shown on a current survey obtained by Buyer (the "Survey"). If Buyer fails to object within the said period, the condition of title to the Property is deemed approved. If Buyer timely objects to any matter disclosed by the Title Commitment, any amendment thereto, or the Survey, Seller may, but is not obligated to, use reasonable efforts to cure such objection(s) (although in no event shall Seller be required to expend funds, other than for Unpermitted Liens (as hereinafter defined)) within ten (10) days thereafter. If, within such ten (10) day period, Seller is unsuccessful or responds in writing that it is unwilling to cure Buyer's objection(s), Buyer will have five (5) days following notice from Seller of its inability or unwillingness to cure in which Buyer shall elect by delivering written notice to Seller and Title Company either to (a) waive its objection(s) or (b) terminate this Agreement. If Buyer elects to terminate this Agreement under this Section, including any termination occurring pursuant to a Title Commitment Update up to and on Closing, Title Company shall immediately deliver the Down Payment to Buyer without further notice to or from Seller and neither party shall thereafter have any further rights or obligations under this Agreement except for those rights and obligations that survive the termination of this Agreement or the Close of Escrow as provided in this Agreement. Failure by Buyer to make a timely election shall constitute an election to terminate this Agreement. Failure by Seller to give any notice shall constitute Seller's election not to cure. Any title exceptions that have not been objected to or waived or deemed approved by Buyer, or which are caused by Buyer or its agents, shall be called "Permitted Title Exceptions". Notwithstanding anything else stated herein, in all events, at closing, Seller shall be obligated to satisfy and otherwise remove all monetary and financial liens (including, but not limited to, mechanic's liens or liens for delinquent unpaid taxes and assessments) caused directly or indirectly by Seller in existence at the time of execution of this Agreement or incurred by Seller on or before Closing hereunder (other than current taxes not yet due) ("Unpermitted Liens").

5.02 Title Policy. At Closing, Title Company shall furnish to Buyer a current ALTA extended coverage owner's policy of title insurance in the amount of the Purchase Price for the Property, insuring Buyer's title to the Property, subject only to the usually printed exceptions contained in such title insurance policies and those matters approved or deemed approved by Buyer pursuant to Section 5.01. The Buyer shall pay the cost of the premium for ALTA extended coverage owner's policy. If Buyer wants any endorsements, Buyer shall pay the cost of any endorsements requested by Buyer.

5.03 Survey. Seller shall provide Buyer with a copy of the most recent ALTA survey covering the Property that is in Seller's possession, if any. If Buyer desires an updated survey of the Property or if a survey is required to enable the Title Company to issue its title policy, it shall be Buyer's responsibility to obtain the survey at Buyer's cost.

6. Preliminary Due Diligence; Examination of Property

6.01 Within three (3) business days after the Opening of Escrow, Seller shall provide to Buyer the following information (the "Property Information"), to the extent the Property Information is in the Seller's actual possession or control: a survey including existing public reports, cross-access easements, drainage easements, ditch easements and/or utility easements/agreements, title report, flood zone status/Elevation Certificate, proof of legal access, septic system reports and permits, well documentation and water rights, Seller's existing title policy, if any, Phase 1 report or any other environmental studies or approvals related to current or past operations on the Property of which the Seller has knowledge, soil and archeological studies, tax information, Seller's Property Disclosure Statement, all written notices from any governmental or quasi-governmental authority of a violation of any law or regulation (including, without limitation, environmental laws) with respect to the Property (or any portion thereof) which remains uncured or with respect to the exercise by such authority of the right of condemnation or eminent domain, disclosure of all defects in the Property actually known to Seller, including, but not limited to, environmental, compaction, zoning, and other information Seller may have in its possession concerning the Property.

Seller makes no representation or warranty whatsoever regarding the Property Information, except that the Seller has no actual knowledge of any incorrect information contained therein (and such representation is made without investigation or review by the Seller of the Property Information). The Seller nor any of its council members, employees, attorneys, engineers, agents or representatives shall be deemed to make or have made any representation or warranty as to the adequacy, validity, accuracy, fitness for a particular purpose or completeness of the Property Information, and neither Seller nor any of its council members, employees, attorneys, engineers, agents or representatives shall have any liability resulting from the use of or reliance on the Property Information. If this transaction does not close for any reason, Buyer shall not use any Property Information provided to Buyer and shall destroy or return the same and any copies thereof to the Seller.

6.02 Examination of Property.

(a) Upon making prior arrangements with the Seller, Buyer, its agents or employees may enter upon the Property for the purposes of inspecting the Property, conducting environmental, soil, engineering, structural and other tests as Buyer may deem necessary. Buyer shall restore the affected portion of the Property to its condition prior to the performance of such studies or inspections. Buyer agrees to indemnify, defend and hold the Seller harmless for, from and against any liability and/or damages caused by Buyer in exercising the foregoing license (unless arising from Seller's gross negligence or willful misconduct), including, but not limited to any and all costs, expenses and attorneys' fees, through all mediation, arbitration, trial and appellate proceedings, and agrees that this obligation to indemnify shall survive any termination of this Agreement and the Closing. Notwithstanding the foregoing, Buyer shall not be liable merely for the discovery of a pre-existing condition at the Property. All expenses incurred in connection with the exercise of such license by Buyer shall be the responsibility of Buyer.

(b) The period between the Opening of Escrow and the date that is sixty (60) days thereafter shall be the feasibility period ("Feasibility Period"). Notwithstanding any provisions to the contrary, Buyer may terminate this Agreement for any reason, by either delivering written notice of such termination to Seller on or before last day of the Feasibility Period. If Buyer elects to terminate this Agreement on or before the expiration of the Feasibility Period, the Down Payment shall be returned to Buyer and neither party shall have any further rights or obligations hereunder except for those rights and obligations that survive termination of this Agreement.

7. "AS IS". Buyer acknowledges and agrees that upon Closing, Seller shall sell and convey the Property to Buyer and Buyer shall accept the Property "**AS IS, WHERE IS, WITH ALL FAULTS,**" except to the extent expressly provided otherwise in this Agreement or in the documents delivered by Seller at Closing. Except as expressly set forth in this Agreement or any document executed by Seller and delivered to Buyer at Closing, Buyer has not relied and will not rely on, and Seller has not made and is not liable for or bound by, any express or implied warranties, guarantees, statements, representations or information pertaining to the Property or relating thereto (including specifically, without limitation, the Property Information) made or furnished by Seller, or any property manager, real estate broker, agent or third party representing or purporting to represent Seller, to whomever made or given, directly or indirectly, orally or in writing. Buyer represents that it is a knowledgeable, experienced and sophisticated Buyer of real estate and that, except as expressly set forth in this Agreement, it is relying solely on its own expertise and that of Buyer's consultants in purchasing the Property and shall make an independent verification of the accuracy of any documents and information provided by Seller. Upon Closing, Buyer shall assume the risk that adverse matters, including, but not limited to, adverse physical or construction defects or adverse environmental, health or safety conditions, may not have been revealed by Buyer's inspections and investigations. Buyer hereby represents and warrants to Seller that Buyer is represented by legal counsel in connection with the transaction contemplated by this Agreement, or Buyer has waived its right to have legal counsel represent Buyer in this transaction. Buyer waives any and all rights or remedies it may have or be entitled to, deriving from disparity in size or from any significant disparate bargaining position in relation to Seller.

8. Remedies.

8.01 Seller's Remedies. In the event Buyer fails to perform its obligations pursuant to this Agreement for any reason except due to the Seller's default or failure to perform its obligations hereunder (and such failure continues for a period of ten (10) days following written notice to the Buyer), the Seller shall be entitled as its sole remedy to terminate this Agreement and retain the Down Payment. Nothing in this Section shall limit the Seller's right to recover attorneys' fees under Section 8.03 below.

8.02 Buyer's Remedies. If the Seller fails to perform any of its obligations under this Agreement prior to the Closing for any reason other than the default of Buyer or the termination of this Agreement (and such failure continues for a period of ten (10) days following written notice to the Seller), as Buyer's sole and exclusive remedy, Buyer may elect to: (i) waive the default and proceed to close this transaction; or (ii) pursue specific performance of this Agreement. As a condition precedent to Buyer's right to pursue specific performance under section (ii) above, Buyer shall (a) not be in default under this Agreement; and (b) file suit therefore in the Superior Court of Arizona in Cochise County, Arizona on or before 5:00 pm MST on or before the date that is sixty (60) business days immediately following the scheduled Closing Date. Nothing in this Section shall limit Buyer's right to recover attorneys' fees under Section 8.03 below.

8.03 Attorneys' Fees. In the event either party hereto is required to employ an attorney because of the other party's default, then the defaulting party shall pay the non-defaulting party's reasonable attorneys' fees incurred in the enforcement of this Agreement.

8.04 Waiver. Seller and Buyer waive the right to pursue consequential or punitive damages against the other.

9. Conditions Precedent to Seller's Obligations. The obligations of Seller under this Agreement are subject to the satisfaction, on or prior to the Closing, of the following conditions, all or any of which may be waived in writing by the Seller:

(a) All representations and warranties made by Buyer in this Agreement and in any written statements delivered to the Seller by Buyer under this Agreement shall be true and correct as of the Closing.

(b) Buyer shall have performed and complied with all obligations of Buyer required by this Agreement to be performed or complied with by Buyer on or prior to the Closing.

(c) All documents required to be delivered by Buyer on or prior to the Closing shall have been properly executed by Buyer and delivered to the Seller in form and substance reasonably satisfactory to Seller.

10. Conditions Precedent to Buyer's Obligations. The obligations of Buyer under this Agreement are subject to the satisfaction, on or prior to the Closing, of the following conditions, all or any of which may be waived in writing by Buyer:

(a) Seller shall convey all right, title and interest in the Property, free and clear of all encumbrances.

(b) Seller shall have performed and complied with all obligations of Seller required by this Agreement to be performed or complied with by Seller on or prior to the Closing.

(c) Each and all of Seller's representations and warranties set forth in this Agreement shall be true and correct at the Effective Date and on the date of Closing.

(d) Title Company shall be prepared to issue the title policy at Closing at its normal rates insuring Buyer, subject only to the Permitted Title Exceptions and requirements related to Buyer.

(e) There shall be no material adverse change in the condition of or affecting the Property not caused by Buyer between the time of Buyer's inspection of the Property prior to the expiration of the Inspection Period and the Closing Date, including, but not limited to (i) environmental contamination, (ii) access, (iii) the availability, adequacy and cost (other than Buyer's construction costs) of or for all utilities that will be necessary to serve Buyer's proposed development (including impact fees and "tap-in" fees), and (iv) any moratorium in place or threatened which would restrict or prevent Buyer from starting and continuing construction on Buyer's proposed project within ninety (90) days after the Closing Date.

(f) All documents required to be delivered by Seller on or prior to the Closing shall have been properly executed by Seller and delivered to the Buyer in form and substance reasonably satisfactory to Buyer and Title Company, as applicable.

11. Closing.

11.01 Closing Matters.

(a) At Closing, the Seller shall execute, deliver and acknowledge the following documents:

(i) A special warranty deed ("Deed") conveying the Property to Buyer, subject only to the Permitted Exceptions;

(ii) An affidavit, signed and acknowledged by the Seller under penalties of perjury, certifying that the Seller is not a nonresident alien, foreign corporation, foreign partnership, foreign trust, foreign estate, or other foreign person within the meaning of Section 1445 and Section 7701 of the Internal Revenue Code of 1986 and the associated Treasury Regulations;

(iii) An affidavit of property value as required by law;

(iv) a closing statement prepared by the Title Company in form and substance mutually acceptable to Buyer and Seller;

(v) An affidavit of title or other affidavit customarily required of sellers by the Title Company to remove the standard exceptions from an owner's title insurance policy which are capable of being removed by such an affidavit;

(vi) Evidence in a form reasonably satisfactory to the Title Company of Seller's authority to convey the Property; and

(vii) Such other documents as are reasonably necessary to close and consummate the purchase and sale transaction contemplated by this Agreement.

(b) At Closing, Buyer shall:

(i) Deliver the Cash Payment to Seller;

(ii) Execute and deliver an affidavit of property value as required by law;

(iii) Execute and deliver such other documents as are reasonably necessary to close and consummate the purchase and sale transaction contemplated by this Agreement.

(c) Possession of the Property shall be delivered to Buyer at Closing.

11.02 Taxes. Buyer shall be responsible for all taxes (real and personal), fees and assessments as of and after the date of the Closing.

11.03 Closing Costs. All closing costs, including the premium for the title insurance policy, recording, escrow, and financing fees, will be paid by the Buyer. Except as otherwise provided in Section 8.03, each party shall be responsible for the payment of its own attorneys' fees incurred in connection with the transaction, which is the subject of this Agreement.

11.04 Commissions. Except as set forth herein, neither Seller nor Buyer have retained or engaged a real estate broker, commission agent, or any other person who is or may be entitled to payment of a commission or finder's fee or other compensation in connection with the transaction contemplated by this Agreement. Seller and Buyer shall indemnify, hold harmless and defend the other, its successors, and assigns for, from, and against any and all claims, demands, actions, costs and expenses, including reasonable attorney and accounting fees and court costs arising out of any claim by any real estate broker or other person claiming through the indemnifying party that such person is entitled to any commission or fee in connection with this transaction. The provisions of this Section 11.04 shall survive the Closing.

12. Seller's Warranties, Representations and Additional Covenants. Seller represents, warrants and covenants that:

(a) Seller is an Arizona municipal corporation, duly organized, validly existing and in good standing under the laws of the State of Arizona. Seller has full power, authority and legal right, and has obtained all necessary consents and approvals, to execute, deliver, and perform its obligations under this Agreement. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by Seller and constitute Seller's legal, valid and binding obligation.

(b) Seller's execution, delivery and performance of its obligations under this Agreement will not conflict with or result in a breach of, or constitute a default under, any of the provisions of Seller's organizational documents or of any contract, instrument, law, government rule, regulation, judgment, decree or order to which Seller is a party or by which Seller is bound.

(c) To the best of Seller's knowledge and belief, there are no lawsuits pending or, threatened against or involving Seller or the Property that affect title.

(d) Seller has not received any notice of pending or threatened claims, condemnations, planned public improvements, annexation, special assessments, rezoning or other adverse claims affecting the Property.

As used in this Agreement, "To the best of Seller's knowledge" shall mean the actual, present knowledge of the current City Manager of the City at the time of signing this Agreement, Ana Urquijo, without making any independent investigations or inquiries and without the duties to do so, and specifically negating the doctrines of constructive or imputed notice or knowledge.

The foregoing representations are true, correct and complete, and the foregoing warranties are in full force and effect and binding on Seller, as of the date hereof, and shall be true and correct and in full force and effect, as the case may be, and deemed to have been reaffirmed and restated by Seller as of the date and time of the Closing. The representations and warranties contained in this Section 12 shall survive Closing but shall terminate six (6) months after the Close of Escrow, unless a suit is filed thereupon in a court of competent jurisdiction on or before the expiration of said six (6) month period. This Section 12 shall survive Closing.

13. Condemnation and Risk of Loss.

13.01 Condemnation. If, prior to Closing, any governmental authority, other than Seller, or other entity having condemnation authority shall institute an eminent domain proceeding or take any steps preliminary thereto (including the giving of any direct or indirect notice of intent to institute such proceedings) with regard to the Property, and the same is not dismissed on or before ten (10) days prior to Closing, Buyer shall be entitled either to terminate this Agreement upon written notice to Seller or to waive such right of termination and receive all such condemnation proceeds. In the event Buyer elects to terminate this Agreement under this Section 12.01, the Down Payment shall be returned to Buyer neither party to this Agreement shall thereafter have any further rights or obligations hereunder except for those rights and obligations that survive termination of this Agreement or the Closing as provided in this Agreement.

13.02 Risk of Loss. The risk of loss or damage to the Property and all liability to third persons until the Closing shall be borne by the Seller. Buyer shall assume all risks of loss or damage to the Property and all liability to third persons upon the Closing.

14. Miscellaneous.

14.01 Notices. Any and all notices, demands or requests required or permitted hereunder shall be in writing and shall be effective upon personal delivery or e-mail transmission or one (1) business day after being deposited with any commercial air courier or express service providing next day delivery, addressed a follows:

To the Seller: City of Douglas
Attn: Ana Urquijo, City Manager
425 E. 10th Street
Douglas, AZ 85607
Email: ana.urquijo@douglasaz.gov

With copy to: Denis M. Fitzgibbons, City Attorney
Fitzgibbons Law Offices, P.L.C.
1115 E. Cottonwood Lane, Suite 150
P.O. Box 11208
Casa Grande, Arizona 85130-0148
Email: denis@fitzgibbonslaw.com

To Buyer: Cox Communications Arizona, LLC
6305-B Peachtree Dunwoody Road
Atlanta, GA 30328
Email: JP.rubadou@coxinc.com

With copy to: Sheley, Hall & Williams, P.C.
303 Peachtree Street, Suite 4440
Atlanta, Georgia 30308
Attention: David L. Lester, Esq./Ann Kustoff, Esq.
Email: dlester@sheleyhall.com and akustoff@sheleyhall.com

Title Company: Pioneer Title Agency,
Attn: Candy Romo
1065 F Ave Suite #6
Douglas, Arizona 85607
Phone: (520) 364-4123
Email: candy.romo@pioneertitleagency.com

Buyer or Seller may change its address for notice by giving notice in the manner provided above. The inability to deliver because of a changed address of which no notice was given, or rejection or other refusal to accept any notice, shall be deemed to be the receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept. Any telephone numbers provided in this Agreement are for aiding informal communications only, and notices shall not be effective if provided orally.

14.02 Time of the Essence; Date of Performance. Time is of the essence of this Agreement, and Buyer and Seller hereby agree to perform each and every obligation hereunder in

a prompt and timely manner; provided, however, that if the date for the performance of any action or the giving of any notice which is required hereunder, occurs on a Saturday, Sunday or legal holiday, the date for performance or giving of notice shall be the next succeeding business day.

14.03 Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be valid under applicable law, but if any provision of this Agreement shall be invalid or prohibited hereunder, such provision shall be ineffective to the extent of such prohibition or invalidation which shall not invalidate the remainder of such provision or the remaining provisions of this Agreement.

14.04 Waiver. The waiver by either party hereto of any right granted to it hereunder shall not be deemed to be a waiver of any other right granted herein, nor shall same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived.

14.05 Entire Agreement. This Agreement, contains the entire agreement of the parties hereto with respect to the matters covered hereby, supersedes all prior agreements, arrangements and understandings between the parties, including without limitation, that certain Invitation for Bids #2023-F-005, and no other agreement, statement or promise made by either party hereto that is not contained herein shall be binding or valid. All exhibits to this Agreement are by this reference incorporated herein.

14.06 Amendments. This Agreement may be amended only by written document signed by each of the parties hereto.

14.07 Further Performance. Each party shall, whenever and as often as it shall be requested by the other party, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further instruments and documents, as may be reasonably necessary in order to complete the sale, conveyance and transfer herein provided and to do any and all things as may be requested in order to carry out the intent and purpose of this Agreement.

14.08 Counterparts. This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. A party's signature on this Agreement or any amendment hereto may be provided electronically scanned or by electronic signature and shall be effective upon transmission to the other party hereto.

14.09 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, devisees, personal and legal representatives, successors and assigns.

14.10 Governing Law; Venue. This Agreement shall be construed and interpreted under, and governed and enforced according to the laws of the State of Arizona, without giving effect to the principles of conflicts of law. The parties agree that should any court action be commenced relating to this Agreement, that the Cochise County Superior Court shall be the

appropriate and exclusive venue therefore. The parties expressly waive any and all provisions of law providing for a change of venue to any other state or federal court.

14.11 Dispute Resolution. In the event a dispute arises under this Agreement, Buyer and Seller agree that there shall be a thirty (30) day moratorium on litigation during which time the Buyer and the Seller agree to attempt to settle the dispute by non-binding mediation before commencement of litigation. The mediation shall be held under the Commercial Mediation Rules of the American Arbitration Association (“AAA”) but shall not be under the administration of the AAA unless agreed to by the Buyer and the Seller in writing, in which case all administrative fees shall be divided evenly between the Buyer and the Seller. The matter in dispute shall be submitted to a mediator mutually selected by Buyer and the Seller. If the Parties cannot agree upon the selection of a mediator within ten (10) business days, then within five (5) business days thereafter, the Buyer and the Seller shall request that the Presiding Judge of the Superior Court in and for the County of Cochise, State of Arizona, appoint the mediator. The mediator selected shall have at least ten (10) years of experience in mediating or arbitrating disputes relating to commercial property. The cost of any such mediation shall be divided equally between the Buyer and the Seller. The results of the mediation shall be nonbinding with either Buyer or the Seller free to initiate litigation upon the conclusion of the latter of the mediation or of the thirty (30) day moratorium on litigation. The mediation shall be completed in one day (or less) and shall be confidential, private, and otherwise governed by the provisions of A.R.S. § 12-2238, to the extent allowed by the Arizona Open Meetings Law, § 38-431 et. seq.

14.12 Headings and Construction. The headings set forth in this Agreement are inserted only for convenience and are not in any way to be construed as part of this Agreement or a limitation on the scope of the particular paragraph to which it refers. Where the context requires herein, the singular shall be construed as the plural, and neutral pronouns shall be construed as masculine and feminine pronouns, and vice versa. This Agreement shall be constructed according to its fair meaning and neither for nor against either party hereto.

14.13 Tax Reporting. Each party shall be responsible for filing all necessary information, reports, returns and statements (collectively, the "Tax Reports") regarding this transaction as required by the Code, including, without limitation, the Tax Reports required pursuant to Section 6045 of the Code.

14.14 Conflict of Interest. This Agreement is subject to the conflict of interest provisions set forth in A.R.S. Section 38-511.

14.15 Assignment. Buyer shall not have the right to assign its rights under this Agreement without the consent of Seller, which may be granted or withheld in Seller’s sole and absolute discretion; provided, however, Buyer may assign this Agreement without consent to any affiliate of Buyer.

[Signatures on following page]

IN WITNESS WHEREOF, Buyer and the Seller have executed this Agreement effective as of the date first written above.

SELLER:
CITY OF DOUGLAS, a municipal corporation

By: _____
Ana Urquijo City Manager

Attest:

Approved as to form:

By: _____
Alma Andrade,
City Clerk

By: _____
Denis M. Fitzgibbons
City Attorney

BUYER:

Cox Communications Arizona, LLC
An Arizona Limited Liability Corporation

By: _____

Its: _____

EXHIBIT A

Legal Description of the Property
(Assessor's Parcel No. 409-06-020T)

SUR TO A DEPTH OF 500' COM AT NW COR OF SEC 13 THN S0DEG 30MIN W453.17'
S89DEG 30MIN E33' S73DEG 32MIN E901.67' TO POB THN S73DEG 21MIN E238.75'
S16DEG 38MIN W364.94' N73DEG 21MIN W238.75' N16DEG 38MIN E364.94' TO POB
SEC 13 24-27 2.00AC

**DOUGLAS, AZ
COUNCIL AGENDA ITEM**

Meeting Date: 02/22/2023

SUBMITTED BY: Alejandro Martinez, Finance Director

MANAGEMENT TEAM REVIEW: Ana Urquijo, City Manager

FOCUS AREA: Advanced Infrastructure Development and Improvement

ORGANIZATIONAL IMPROVEMENTS: Equipment

SUBJECT: **FIRST READING of ORDINANCE NO. 23-1161**, an Ordinance of the Mayor and Council of the City of Douglas, Cochise County, Arizona, **AUTHORIZING** the City Manager to **EXECUTE** and **DELIVER** an **INSTALLMENT LOAN AGREEMENT** with **BAYSTONE GOVERNMENT FINANCE**, a division of KS Statebank for purposes of **FINANCING** a **WHEEL LOADER** for the City of Douglas wastewater treatment plant; authorizing the taking of all other actions necessary to the consummation of the transactions contemplated by this Ordinance; establishing severability of components of Ordinance; and declaring an emergency.

EXECUTIVE SUMMARY:

The City of Douglas Wastewater Treatment Plant was in need of a Wheel Loader for its operations. The Procurement Department was tasked with the process of soliciting bids using the City's own reserves, with the understanding that it would reimburse itself via loan proceeds. The loader was purchased in October 2022.

BACKGROUND:

The City of Douglas procurement department initiated the solicitation of financing of the loader after its acquisition through its sealed bid process in the amount of \$200,333.42. Baystone Government Finance, a division of KS StateBank submitted the bid that had the lowest interest rate and most convenient payment structure with a nominal annual rate of 5.120% for 5 years. Semi-annual principal and interest payments will be \$22,387.86 with a final payment due on 08/15/2027. Loan proceeds will reimburse the city of the funds used to acquire the loader while leveraging financial resources. The Sewer Fund will cover the loan payments within its budgeted debt service line item.

DISCUSSION:

Staff recommends awarding the loan contract in the amount of \$200,334.42 to State Bank for the financing of a wheel loader for the Wastewater Treatment Plant.

FISCAL IMPACT:

Loan payments have been budgeted under the sewer fund's debt service. Total interest cost of \$23,544.18 for 5 years.

Fiscal Year: 2022/2023

Budgeted: Y / N

“...I MOVE THAT THE MAYOR AND COUNCIL APPROVE THE PLACEMENT OF ORDINANCE NO. 23-1161 ON ITS FIRST READING BY NUMBER AND TITLE ONLY AND DECLARING AN EMERGENCY.”

“...I MOVE THAT THE MAYOR AND COUNCIL APPROVE THE FIRST READING OF ORDINANCE NO. 23-1161, AND TO PLACE IT ON SECOND READING BY NUMBER AND TITLE ONLY AND DECLARING AN EMERGENCY.”

“...I MOVE THAT THE MAYOR AND COUNCIL APPROVE THE SECOND READING OF ORDINANCE 1161 BY NUMBER AND TITLE ONLY AND DECLARING AN EMERGENCY.”

Section 4, Item B.

ORDINANCE NO. 23-1161

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AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF DOUGLAS, COCHISE COUNTY, ARIZONA, AUTHORIZING THE CITY MANAGER TO EXECUTE AND DELIVER AN INSTALLMENT LOAN AGREEMENT WITH BAYSTONE GOVERNMENT FINANCE, A DIVISION OF KS STATEBANK FOR PURPOSES OF FINANCING A WHEEL LOADER FOR THE CITY OF DOUGLAS WASTEWATER TREATMENT PLANT; AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTION CONTEMPLATED BY THIS ORDINANCE; ESTABLISHING SEVERABILITY OF COMPONENTS OF ORDINANCE; AND DECLARING AN EMERGENCY.

WHEREAS, as part of the efforts to improve the operation of the Wastewater Treatment Plant in the City of Douglas, the Mayor and City Council determined that it is in the best interest of the city to acquire and finance the acquisition of awheel loader and enter into an Installment Lease/Purchase Agreement;

WHEREAS, to pay the costs of the wheel loader, the Mayor and Council of the City deem it necessary and desirable to borrow funds not to exceed \$200,333.42 from Baystone Government Finance a division of KS State Bank (the "Lender") pursuant to a request for proposal issued by the City of Douglas; and

WHEREAS, the interest rate offered by Baystone Government Finance will expire in less than thirty (30) days.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the City of Douglas, Arizona, as follows:

Section 1. The City Manager of the City is hereby authorized and directed to enter into and execute on behalf of the City the Installment Lease/Purchase Agreement, attached hereto as Exhibit A and incorporated herein by reference, including other documents necessary to consummate the acquisition of the wheel loader with the following restrictions: (1) a total principal amount of the funding not to exceed \$200,333.42; (2) a five (5) year maturity amortization schedule; and (3) the interest rate (which shall not exceed five point twelve (5.120%) per annum and the dates for payment of such interest (the "Interest Payment Dates").

Section 2. The obligation of the City to make the payments under the Installment Lease/Purchase Agreement does not constitute an obligation of the City or the State of Arizona, or any of its political subdivisions, for which the City or the State of Arizona, or any of its political subdivisions, is obligated to levy or pledge any form of property taxation nor does the obligation to make payments under the Installment Lease/Purchase Agreement constitute an indebtedness of the City or of the State of Arizona, or any of its political subdivisions, within the meaning of the Constitution of the State of Arizona or otherwise.

Section 3. The officers and agents of the City are hereby authorized and directed to take all actions, execute all certificates, documents, and agreements, and do all things reasonable and necessary to (A) obtain the funding, (B) acquire, renovate, furnish, and equip the wheel loader and (C) otherwise carry out the terms of this Ordinance.

Section 4. Severability. If any chapter, section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

1 **Section 5. Emergency Clause.** Whereas the immediate operation of this Ordinance is necessary to the
2 preservation of the public health, peace and welfare, an emergency is declared to exist, and this Ordinance
shall come into full force and effect by its terms from and after its passage by six-sevenths (6/7) of the
Council and approval of the Mayor.

3 **PASSED AND ADOPTED** by the Mayor and Council of the City of Douglas, Arizona, this 22nd day of
4 February 2023.

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Donald C. Huish, Mayor

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Attest:

Approved as to form:

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Alma Andrade, City Clerk

Denis Fitzgibbons, City Attorney

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Prepared by:
Alejandro Martinez, Finance Director

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2627 KFB PLAZA, SUITE 202E | 785-587-4000
MANHATTAN, KS 66503

Section 4, Item B.

SENT VIA EMAIL: ALEJANDRO.MARTINEZ@DOUGLASAZ.GOV

February 14, 2023

Mr. Alejandro Martinez
City of Douglas, Arizona

Re: Financing for City of Douglas, Arizona for One (1) Caterpillar 930M Wheel Loader, PIN: CAT0930MCKTG02026

Dear Mr. Martinez:

Thank you for choosing KS StateBank as your financing source. Attached hereto, please find the Contract and documentation for your review and completion. Included is a Documentation Instruction sheet to guide you through the process. **All required documentation must be received by 3:00pm CST in order to fund the following business day.**

The interest rate you have been quoted is valid through March 14, 2023.

Please note that, depending on circumstances, we reserve the right to charge a reasonable fee to Obligor/broker, if this transaction is not funded. This fee is for expenses incurred and services performed related to the processing of the transaction. This fee will NOT be charged if the transaction is funded by Obligee.

If you have any questions regarding the documentation please feel free to contact me at (877) 587-4054.

Sincerely,

Ms. Danielle Shandy
Client Relations

DOCUMENTATION INSTRUCTIONS

The instructions listed below should be followed when completing the enclosed documentation. ***Please sign in blue ink and print on single sided paper only.*** Documentation completed improperly will delay funding. If you have any questions regarding the Conditions to Funding, instructions or the documentation, please call us at (877) 587-4054.

I. Attached Documentation

1. **Government Obligation Contract**
 - ◆ An authorized individual that is with the Obligor should sign on the first space provided. ***All original signatures are required for funding.***
2. **Exhibit A – Description of Equipment**
 - ◆ Review equipment description. Complete serial number/VIN if applicable.
 - ◆ List the location where the equipment will be located after delivery/installation.
3. **Exhibit B – Payment Schedule**
 - ◆ Sign and print name and title
4. **Exhibit C - Certificate of Acceptance**
 - ◆ Sign and print name and title
5. **Exhibit D - Obligor Resolution**
 - ◆ Type in the date of the meeting in which the purchase was approved.
 - ◆ Print or type the name and title of the individual(s) who is authorized to execute the Contract.
 - ◆ The board chairman or other authorized member of the Obligor's Governing Body must sign the Resolution where indicated.
 - ◆ The board secretary or board clerk of Obligor must attest the Resolution where indicated.
6. **Exhibit E - Bank Qualified Certificate**
 - ◆ Sign and print name and title
7. **Insurance Requirements**
 - ◆ Complete insurance company contact information where indicated.
8. **Debit Authorization – (Preferred)**
 - ◆ Complete form and attach a voided check
9. **8038G IRS Form**
 - ◆ Please read 8038 Review Form
 - ◆ In Box 2, type Employer Identification Number
 - ◆ Sign and print name and title

II. Additional Documentation Required

1. First payment check as stated on attached invoice
2. Insurance certificate as stated on the Insurance Requirements Form
3. Vendor Invoice for the amount to finance listing applicable SN/VIN, down payment, trade, etc.
4. Front and back copies of MSO or title listing **"KS StateBank AOIA" as first lien holder**

III. Condition to Funding

If, for any reason: (i) the required documentation is not returned by May 3, 2023, is incomplete, or has unresolved issues relating thereto, or (ii) on, or prior to the return of the documentation, there is a change of circumstance, including but not limited to changes in the federal corporate income tax rate or reducing/capping the tax-exempt interest benefit, which adversely affects the expectations, rights or security of the Obligee or its assignees; then Obligee or its assignees reserve the right to withdraw/void its offer to fund this transaction in its entirety. *Neither KS StateBank nor Baystone Government Finance is acting as an advisor to the municipal entity/obligated person and neither owes a fiduciary duty pursuant to Section 15B of the Exchange Act of 1934.*

All documentation should be returned to:

KS StateBank
2627 KFB Plaza, Suite 202E
Manhattan, Kansas 66503

Obligor

City of Douglas, Arizona
 425 East 10th Street
 Douglas, Arizona 85604

Obligee

KS StateBank
 1010 Westloop, P.O. Box 69
 Manhattan, Kansas 66505-0069

Dated as of January 15, 2023

This Government Obligation Contract dated as of the date listed above is between Obligee and Obligor listed directly above. Obligee desires to finance the purchase of the Equipment described in Exhibit A to Obligor and Obligor desires to have Obligee finance the purchase of the Equipment subject to the terms and conditions of this Contract which are set forth below.

I. Definitions

Section 1.01 Definitions. The following terms will have the meanings indicated below unless the context clearly requires otherwise:

“Additional Schedule” refers to the proper execution of additional schedules to Exhibit A and Exhibit B, as well as other exhibits or documents that may be required by the Obligee all of which relate to the financing of additional Equipment.

“Budget Year” means the Obligor’s fiscal year.

“Commencement Date” is the date when Obligor’s obligation to pay Contract Payments begins.

“Contract” means this Government Obligation Contract and all Exhibits attached hereto, all addenda, modifications, schedules, refinancings, guarantees and all documents relied upon by Obligee prior to execution of this Contract.

“Contract Payments” means the payments Obligor is required to make under this Contract as set forth on Exhibit B.

“Contract Term” means the Original Term and all Renewal Terms.

“Exhibit” includes the Exhibits attached hereto, and any “Additional Schedule”, whether now existing or subsequently created.

“Equipment” means all of the items of Equipment listed on Exhibit A and any Additional Schedule, whether now existing or subsequently created, and all replacements, restorations, modifications and improvements.

“Government” as used in the title hereof means a State or a political subdivision of the State within the meaning of Section 103(a) of the Internal Revenue Code of 1986, as amended (“Code”), or a constituted authority or district authorized to issue obligations on behalf of the State or political subdivision of the State within the meaning of Treasury Regulation 1.103-1(b), or a qualified volunteer fire company within the meaning of section 150(e)(1) of the Code.

“Obligee” means the entity originally listed above as Obligee or any of its assignees.

“Obligor” means the entity listed above as Obligor and which is financing the Equipment through Obligee under the provisions of this Contract.

“Original Term” means the period from the Commencement Date until the end of the Budget Year of Obligor.

“Renewal Term” means the annual term which begins at the end of the Original Term and which is simultaneous with Obligor’s Budget Year and each succeeding Budget Year for the number of Budget Years necessary to comprise the Contract Term.

“State” means the state which Obligor is located.

II. Obligor Warranties

Section 2.01 Obligor represents, warrants and covenants as follows for the benefit of Obligee or its assignees:

- (a) Obligor is an “issuer of tax exempt obligations” because Obligor is the State or a political subdivision of the State within the meaning of Section 103(a) of the Internal Revenue Code of 1986, as amended, (the “Code”) or because Obligor is a constituted authority or district authorized to issue obligations on behalf of the State or political subdivision of the State within the meaning of Treasury Regulation 1.103-1(b), or a qualified volunteer fire company within the meaning of section 150(e)(1) of the Code.
- (b) Obligor has complied with any requirement for a referendum and/or competitive bidding.
- (c) Obligor has complied with all statutory laws and regulations that may be applicable to the execution of this Contract; Obligor, and its officer executing this Contract, are authorized under the Constitution and laws of the State to enter into this Contract and have used and followed all proper procedures of its governing body in executing and delivering this Contract. The officer of Obligor executing this Contract has the authority to execute and deliver this Contract. This Contract constitutes a legal, valid, binding and enforceable obligation of the Obligor in accordance with its terms.
- (d) Obligor shall use the Equipment only for essential, traditional government purposes.
- (e) Should the IRS disallow the tax-exempt status of the interest portion of the Contract Payments as a result of the failure of the Obligor to use the Equipment for governmental purposes, or should the Obligor cease to be an issuer of tax exempt obligations, or should the obligation of Obligor created under this Contract cease to be a tax exempt obligation for any reason, then Obligor shall be required to pay additional sums to the Obligee or its assignees so as to bring the after tax yield on this Contract to the same level as the Obligee or its assignees would attain if the transaction continued to be tax-exempt.
- (f) Obligor has never non-appropriated funds under a contract similar to this Contract.
- (g) Obligor will submit to the Secretary of the Treasury an information reporting statement as required by the Code.
- (h) Upon request by Obligee, Obligor will provide Obligee with current financial statements, reports, budgets or other relevant fiscal information.
- (i) Obligor shall retain the Equipment free of any hazardous substances as defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et. seq. as amended and supplemented.
- (j) Obligor hereby warrants the General Fund of the Obligor is the primary source of funds or a backup source of funds from which the Contract Payments will be made.
- (k) Obligor presently intends to continue this Contract for the Original Term and all Renewal Terms as set forth on Exhibit B hereto. The official of Obligor responsible for budget preparation will include in the budget request for each Budget Year the Contract Payments to become due in such Budget Year, and will use all reasonable and lawful means available to secure the appropriation of money for such Budget Year sufficient to pay the Contract Payments coming due therein. Obligor reasonably believes that moneys can and will lawfully be appropriated and made available for this purpose.
- (l) Obligor has selected both the Equipment and the vendor(s) from whom the Equipment is to be purchased upon its own judgment and without reliance on any manufacturer, merchant, vendor or distributor, or agent thereof, of such equipment to the public.
- (m) Obligor owns the Equipment and any additional collateral free and clear of any liens, and Obligor has not and will not, during the Contract Term, create, permit, incur or assume any levies, liens or encumbrances of any kind with respect to the Equipment or any additional collateral except those created by this Contract.
- (n) Obligor warrants, as applicable, the purchase of any telecommunications and video surveillance services or equipment financed hereunder complies with 2 CFR § 200.216 and 2 CFR § 200.471.
- (o) Obligor warrants that it understands and has complied with 2 CFR § 200.322 in relation to domestic preferences for procurements, as applicable.

Section 2.02 Escrow Agreement. In the event both Obligee and Obligor mutually agree to utilize an Escrow Account, then immediately following the execution and delivery of this Contract, Obligee and Obligor agree to execute and deliver and to cause Escrow Agent to execute and deliver the Escrow Agreement. This Contract shall take effect only upon execution and delivery of the Escrow Agreement by the parties thereto. Obligee shall deposit or cause to be deposited with the Escrow Agent for credit to the Equipment Acquisition Fund the sum of N/A, which shall be held, invested and disbursed in accordance with the Escrow Agreement.

III. Acquisition of Equipment, Contract Payments and the Purchase Option Price

Section 3.01 Acquisition and Acceptance. Obligor shall be solely responsible for the ordering of the Equipment and for the delivery and installation of the Equipment. Execution of the Certificate of Acceptance or, alternatively, Payment Request and Equipment Acceptance Form, by a duly authorized representative of Obligor, shall constitute acceptance of the Equipment on behalf of the Obligor.

Section 3.02 Contract Payments. Obligor shall pay Contract Payments exclusively to Obligee or its assignees in lawful, legally available money of the United States of America. The Contract Payments shall be sent to the location specified by the Obligee or its assignees. The Contract Payments shall constitute a current expense of the Obligor and shall not constitute an indebtedness of the Obligor. The Contract Payments, payable without notice or demand, are due as set forth on Exhibit B. Obligee shall have the option to charge interest at the highest lawful rate on any Contract Payment received later than the due date for the number of days that the Contract Payment(s) were late, plus any additional accrual on the outstanding balance for the number of days that the Contract Payment(s) were late. Obligee shall also have the option, on monthly payments only, to charge a late fee of up to 10% of the monthly Contract Payment that is past due.

Furthermore, Obligor agrees to pay any fees associated with the use of a payment system other than check, wire transfer, or ACH. Once all amounts due Obligees hereunder are paid, Obligor will release any and all of its rights, title and interest in the Equipment.

Section 4, Item B.

Section 3.03 CONTRACT PAYMENTS UNCONDITIONAL. Except as provided under Section 4.01, THE OBLIGATIONS OF OBLIGOR TO MAKE CONTRACT PAYMENTS, TO OBSERVE THE OTHER COVENANTS CONTAINED IN THIS CONTRACT SHALL BE ABSOLUTE AND UNCONDITIONAL IN ALL EVENTS WITHOUT ABATEMENT, DIMINUTION, DEDUCTION, SET-OFF, OR SUBJECT TO DEFENSE OR COUNTERCLAIM.

Section 3.04 Purchase Option Price. Upon thirty (30) days written notice, Obligor shall have the option to pay, in addition to the Contract Payment, the corresponding Purchase Option Price which is listed on the same line on Exhibit B. This option is only available to the Obligor on the Contract Payment date and no partial prepayments are allowed. If Obligor chooses this option and pays the Purchase Option Price to Obligees then Obligees will transfer any and all of its rights, title and interest in the Equipment to Obligor.

Section 3.05 Contract Term. The Contract Term shall be the Original Term and all Renewal Terms until all the Contract Payments are paid as set forth on Exhibit B except as provided under Section 4.01 and Section 9.01 below. If, after the end of the budgeting process which occurs at the end of the Original Term or any Renewal Term, Obligor has not non-appropriated as provided for in this Contract then the Contract Term shall be extended into the next Renewal Term and the Obligor shall be obligated to make all the Contract Payments that come due during such Renewal Term.

Section 3.06 Disclaimer of Warranties. OBLIGEE MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR ANY OTHER WARRANTY WITH RESPECT TO THE EQUIPMENT. OBLIGEE IS NOT A MANUFACTURER, SELLER, VENDOR OR DISTRIBUTOR, OR AGENT THEREOF, OF SUCH EQUIPMENT; NOR IS OBLIGEE A MERCHANT OR IN THE BUSINESS OF DISTRIBUTING SUCH EQUIPMENT TO THE PUBLIC. OBLIGEE SHALL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGE ARISING OUT OF THE INSTALLATION, OPERATION, POSSESSION, STORAGE OR USE OF THE EQUIPMENT BY OBLIGOR.

IV. Non-Appropriation

Section 4.01 Non-Appropriation. If insufficient funds are available in Obligor's budget for the next Budget Year to make the Contract Payments for the next Renewal Term and the funds to make such Contract Payments are otherwise unavailable by any lawful means whatsoever, then Obligor may non-appropriate the funds to pay the Contract Payments for the next Renewal Term. Such non-appropriation shall be evidenced by the passage of an ordinance or resolution by the governing body of Obligor specifically prohibiting Obligor from performing its obligations under this Contract and from using any moneys to pay the Contract Payments due under this Contract for a designated Budget Year and all subsequent Budget Years. If Obligor non-appropriates, then all obligations of the Obligor under this Contract regarding Contract Payments for all remaining Renewal Terms shall be terminated at the end of the then current Original Term or Renewal Term without penalty or liability to the Obligor of any kind provided that if Obligor has not delivered possession of the Equipment to Obligees as provided herein and conveyed to Obligees or released its interest in the Equipment by the end of the last Budget Year for which Contract Payments were paid, the termination shall nevertheless be effective but Obligor shall be responsible for the payment of damages in an amount equal to the amount of the Contract Payments thereafter coming due under Exhibit B which are attributable to the number of days after such Budget Year during which Obligor fails to take such actions and for any other loss suffered by Obligees as a result of Obligor's failure to take such actions as required. Obligor shall immediately notify the Obligees as soon as the decision to non-appropriate is made. If such non-appropriation occurs, then Obligor shall deliver the Equipment to Obligees as provided below in Section 9.04. Obligor shall be liable for all damage to the Equipment other than normal wear and tear. If Obligor fails to deliver the Equipment to Obligees, then Obligees may enter the premises where the Equipment is located and take possession of the Equipment and charge Obligor for costs incurred.

V. Insurance, Damage, Insufficiency of Proceeds

Section 5.01 Insurance. Obligor shall maintain both property insurance and liability insurance at its own expense with respect to the Equipment. Obligor shall be solely responsible for selecting the insurer(s) and for making all premium payments and ensuring that all policies are continuously kept in effect during the period when Obligor is required to make Contract Payments. Obligor shall provide Obligees with a certificate of insurance which lists the Obligees and/or assigns as a loss payee and an additional insured on the policies with respect to the Equipment.

- (a) Obligor shall insure the Equipment against any loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State and any other risks reasonably required by Obligees in an amount at least equal to the then applicable Purchase Option Price of the Equipment. Alternatively, Obligor may insure the Equipment under a blanket insurance policy or policies.
- (b) The liability insurance shall insure Obligees from liability and property damage in any form and amount satisfactory to Obligees.
- (c) Obligor may self-insure against the casualty risks and liability risks described above. If Obligor chooses this option, Obligor must furnish Obligees with a certificate and/or other documents which evidences such coverage.
- (d) All insurance policies issued or affected by this Section shall be so written or endorsed such that the Obligees and its assignees are named additional insureds and loss payees and that all losses are payable to Obligor and Obligees or its assignees as their interests may appear. Each policy issued or affected by this Section shall contain a provision that the insurance company shall not cancel or materially modify the policy without first giving thirty (30) days advance notice to Obligees or its assignees. Obligor shall furnish to Obligees certificates evidencing such coverage throughout the Contract Term.

Section 5.02 Damage to or Destruction of Equipment. Obligor assumes the risk of loss or damage to the Equipment. If the Equipment or any portion thereof is lost, stolen, damaged, or destroyed by fire or other casualty, Obligor will immediately report all such losses to all possible insurers and take the proper procedures to obtain all insurance proceeds. At the option of Obligees, Obligor shall either (1) apply the Net Proceeds to replace, repair or restore the Equipment or (2) apply the Net Proceeds to the applicable Purchase Option Price. For purposes of this Section and Section 5.03, the term Net Proceeds shall mean the amount of insurance proceeds collected from all applicable insurance policies after deducting all expenses incurred in the collection thereof.

Section 5.03 Insufficiency of Net Proceeds. If there are no Net Proceeds for whatever reason or if the Net Proceeds are insufficient to pay in full the cost of any replacement, repair, restoration, modification or improvement of the Equipment, then Obligor shall, at the option of Obligees, either (1) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds or (2) apply the Net Proceeds to the Purchase Option Price and pay the deficiency, if any, to the Obligees.

Section 5.04 Obligor Negligence. Obligor assumes all risks and liabilities, whether or not covered by insurance, for loss or damage to the Equipment and for injury to or death of any person or damage to any property whether such injury or death be with respect to agents or employees of Obligor or of third parties, and whether such property damage be to Obligor's property or the property of others (including, without limitation, liabilities for loss or damage related to the release or threatened release of hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act or similar or successor law or any State or local equivalent now existing or hereinafter enacted which in any manner arise out of or are incident to any possession, use, operation, condition or storage of any Equipment by Obligor), which is proximately caused by the negligent conduct of Obligor, its officers, employees and agents.

Section 5.05 Reimbursement. Obligor hereby assumes responsibility for and agrees to reimburse Obligees for all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses (including reasonable attorneys' fees) of whatsoever kind and nature, imposed on, incurred by or asserted against Obligees that in any way relate to or arise out of a claim, suit or proceeding, based in whole or in part upon the negligent conduct of Obligor, its officers, employees and agents, or arose out of installation, operation, possession, storage or use of any item of the Equipment, to the maximum extent permitted by law.

VI. Title and Security Interest

Section 6.01 Title. To the extent permitted under State law, title to the Equipment shall vest in Obligor when Obligor acquires and accepts the Equipment. Title to the Equipment will automatically transfer to the Obligees in the event Obligor non-appropriates under Section 4.01 or in the event Obligor defaults under Section 9.01. In such event, Obligor shall execute and deliver to Obligees such documents as Obligees may request to evidence the passage of legal title to the Equipment to Obligees.

Section 6.02 Security Interest. To secure the payment of all Obligor's obligations under this Contract, as well as all other obligations, debts and liabilities, plus interest thereon, whether now existing or subsequently created, Obligor hereby grants to Obligees a security interest under the Uniform Commercial Code constituting a first lien on the Equipment described more fully on Exhibit A. Furthermore, Obligor agrees that any other collateral securing any other obligation(s) to Obligees, whether offered prior to or subsequent hereto, also secures this obligation. The security interest established by this section includes not only all additions, attachments, repairs and replacements to the Equipment but also all proceeds therefrom. Obligor authorizes Obligees to prepare and record any Financing Statement required under the Uniform Commercial Code to perfect the security interest created hereunder. Obligor agrees that any Equipment listed on Exhibit A is and will remain personal property and will not be considered a fixture even if attached to real property.

VII. Assignment

Section 7.01 Assignment by Obligees. All of Obligees's rights, title and/or interest in and to this Contract may be assigned and reassigned in whole or in part to one or more assignees or sub-assignees by Obligees at any time without the consent of Obligor. No such assignment shall be effective as against Obligor until the assignor shall have filed with Obligor written notice of assignment identifying the assignee. Obligor shall pay all Contract Payments due hereunder relating to such Equipment to or at the direction of Obligees or the assignee named in the notice of assignment. Obligor shall keep a complete and accurate record of all such assignments.

Section 7.02 Assignment by Obligor. None of Obligor's right, title and interest under this Contract and in the Equipment may be assigned by Obligor unless Obligees approves of such assignment in writing before such assignment occurs and only after Obligor first obtains an opinion from nationally recognized counsel stating that such assignment will not jeopardize the tax-exempt status of the obligation.

VIII. Maintenance of Equipment

Section 8.01 Equipment. Obligor shall keep the Equipment in good repair and working order, and as required by manufacturer's and warranty specifications. If Equipment consists of copiers, Obligor is required to enter into a copier maintenance/service agreement. Obligees shall have no obligation to inspect, test, service, maintain, repair or make improvements or additions to

Equipment under any circumstances. Obligor will be liable for all damage to the Equipment, other than normal wear and tear, caused by Obligor, its employees or its agents, for and obtain all permits, licenses and taxes related to the ownership, installation, operation, possession, storage or use of the Equipment. If the Equipment includes a hazardous waste as defined in the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq. Obligor agrees that Obligees or its Assignees may execute any additional documents including financing statements, affidavits, notices, and similar instruments, for and on behalf of Obligor which Obligees deems necessary or appropriate to protect Obligees' interest in the Equipment and in this Contract. Obligor shall allow Obligees to examine and inspect the Equipment at all reasonable times.

IX. Default

Section 9.01 Events of Default defined. The following events shall constitute an "Event of Default" under this Contract:

- (a) Failure by Obligor to pay any Contract Payment listed on Exhibit B for fifteen (15) days after such payment is due according to the Payment Date listed on Exhibit B.
- (b) Failure to pay any other payment required to be paid under this Contract at the time specified herein and a continuation of said failure for a period of fifteen (15) days after written notice by Obligees that such payment must be made. If Obligor continues to fail to pay any payment after such period, then Obligees may, but will not be obligated to, make such payments and charge Obligor for all costs incurred plus interest at the highest lawful rate.
- (c) Failure by Obligor to observe and perform any warranty, covenant, condition, promise or duty under this Contract for a period of thirty (30) days after written notice specifying such failure is given to Obligor by Obligees, unless Obligees agrees in writing to an extension of time. Obligees will not unreasonably withhold its consent to an extension of time if corrective action is instituted by Obligor. Subsection (c) does not apply to Contract Payments and other payments discussed above.
- (d) Any statement, material omission, representation or warranty made by Obligor in or pursuant to this Contract which proves to be false, incorrect or misleading on the date when made regardless of Obligor's intent and which materially adversely affects the rights or security of Obligees under this Contract.
- (e) Any provision of this Contract which ceases to be valid for whatever reason and the loss of such provision would materially adversely affect the rights or security of Obligees.
- (f) Except as provided in Section 4.01 above, Obligor admits in writing its inability to pay its obligations.
- (g) Obligor defaults on one or more of its other obligations.
- (h) Obligor becomes insolvent, is unable to pay its debts as they become due, makes an assignment for the benefit of creditors, applies for or consents to the appointment of a receiver, trustee, conservator, custodian, or liquidator of Obligor, or all or substantially all of its assets, or a petition for relief is filed by Obligor under federal bankruptcy, insolvency or similar laws, or is filed against Obligor and is not dismissed within thirty (30) days thereafter.

Section 9.02 Remedies on Default. Whenever any Event of Default exists, Obligees shall have the right to take one or any combination of the following remedial steps:

- (a) With or without terminating this Contract, Obligees may declare all Contract Payments and other amounts payable by Obligor hereunder to the end of the then current Budget Year to be immediately due and payable.
- (b) With or without terminating this Contract, Obligees may require Obligor at Obligor's expense to redeliver any or all of the Equipment and any additional collateral to Obligees as provided below in Section 9.04. Such delivery shall take place within fifteen (15) days after the Event of Default occurs. If Obligor fails to deliver the Equipment and any additional collateral, Obligees may enter the premises where the Equipment and any additional collateral is located and take possession of the Equipment and any additional collateral and charge Obligor for costs incurred. Notwithstanding that Obligees has taken possession of the Equipment and any additional collateral, Obligor shall still be obligated to pay the remaining Contract Payments due up until the end of the then current Original Term or Renewal Term. Obligor will be liable for any damage to the Equipment and any additional collateral caused by Obligor or its employees or agents.
- (c) Obligees may take whatever action at law or in equity that may appear necessary or desirable to enforce its rights. Obligor shall be responsible to Obligees for all costs incurred by Obligees in the enforcement of its rights under this Contract including, but not limited to, reasonable attorney fees.

Section 9.03 No Remedy Exclusive. No remedy herein conferred upon or reserved to Obligees is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Contract now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or shall be construed to be a waiver thereof.

Section 9.04 Return of Equipment and Storage.

- (a) Surrender: The Obligor shall, at its own expense, surrender the Equipment, any additional collateral and all required documentation to evidence transfer of title from Obligor to the Obligees in the event of a default or a non-appropriation by delivering the Equipment and any additional collateral to the Obligees to a location accessible by common carrier and designated by Obligees. In the case that any of the Equipment and any additional collateral consists of software, Obligor shall destroy all intangible items constituting such software and shall deliver to Obligees all tangible items constituting such software. At Obligees' request, Obligor shall also certify in a form acceptable to Obligees that Obligor has complied with the above software return provisions and that they will immediately cease using the software and that they shall permit Obligees and/or the vendor of the software to inspect Obligor's locations to verify compliance with the terms hereto.
- (b) Delivery: The Equipment and any additional collateral shall be delivered to the location designated by the Obligees by a common carrier unless the Obligees agrees in writing that a common carrier is not needed. When the Equipment and any additional collateral is delivered into the custody of a common carrier, the Obligor shall arrange for the shipping of the item and its insurance in transit in accordance with the Obligees' instructions and at the Obligor's sole expense. Obligor at its expense shall completely sever and disconnect the Equipment and any additional collateral or its component parts from the Obligor's property all without liability to the Obligees. Obligor shall pack or crate the Equipment and any additional collateral and all of the component parts of the Equipment and any additional collateral carefully and in accordance with any recommendations of the manufacturer. The Obligor shall deliver to the Obligees the plans, specifications, operation manuals or other warranties and documents furnished by the manufacturer or vendor on the Equipment and any additional collateral and such other documents in the Obligor's possession relating to the maintenance and methods of operation of such Equipment and any additional collateral.
- (c) Condition: When the Equipment is surrendered to the Obligees it shall be in the condition and repair required to be maintained under this Contract. It will also meet all legal regulatory conditions necessary for the Obligees to sell or lease it to a third party and be free of all liens. If Obligees reasonably determines that the Equipment or an item of the Equipment, once it is returned, is not in the condition required hereby, Obligees may cause the repair, service, upgrade, modification or overhaul of the Equipment or an item of the Equipment to achieve such condition and upon demand, Obligor shall promptly reimburse Obligees for all amounts reasonably expended in connection with the foregoing.
- (d) Storage: Upon written request by the Obligees, the Obligor shall provide free storage for the Equipment and any additional collateral for a period not to exceed 60 days after the expiration of the Contract Term before returning it to the Obligees. The Obligor shall arrange for the insurance described to continue in full force and effect with respect to such item during its storage period and the Obligees shall reimburse the Obligor on demand for the incremental premium cost of providing such insurance.

X. Miscellaneous

Section 10.01 Notices. All notices shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties at their respective places of business as first set forth herein or as the parties shall designate hereafter in writing.

Section 10.02 Binding Effect. Obligor acknowledges this Contract is not binding upon the Obligees or its assignees unless the Conditions to Funding listed on the Documentation Instructions have been met to Obligees' satisfaction, and Obligees has executed the Contract. Thereafter, this Contract shall inure to the benefit of and shall be binding upon Obligees and Obligor and their respective successors and assigns.

Section 10.03 Severability. In the event any provision of this Contract shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 10.04 Amendments, Addenda, Changes or Modifications. This Contract may be amended, added to, changed or modified by written agreement duly executed by Obligees and Obligor. Furthermore, Obligees reserves the right to directly charge or amortize into the remaining balance due from Obligor, a reasonable fee, to be determined at that time, as compensation to Obligees for the additional administrative expense resulting from such amendment, addenda, change or modification requested by Obligor.

Section 10.05 Execution in Counterparts. This Contract may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 10.06 Captions. The captions or headings in this Contract do not define, limit or describe the scope or intent of any provisions or sections of this Contract.

Section 10.07 Master Contract. This Contract can be utilized as a Master Contract. This means that the Obligees and the Obligor may agree to the financing of additional Equipment under this Contract at some point in the future by executing one or more Additional Schedules to Exhibit A and Exhibit B, as well as other exhibits or documents that may be required by Obligees. Additional Schedules will be consecutively numbered on each of the exhibits which make up the Additional Schedule and all the terms and conditions of the Contract shall govern each Additional Schedule.

Section 10.08 Entire Writing. This Contract constitutes the entire writing between Obligees and Obligor. No waiver, consent, modification or change of terms of this Contract shall bind either party unless in writing and signed by both parties, and then such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, representations, conditions, or warranties, express or implied, which are not specified herein regarding this Contract, the Equipment or any additional collateral, financed hereunder. Any terms and conditions of any purchase order or other documents submitted by Obligor in connection with this Contract which are in addition to or inconsistent with the terms and conditions of this Contract will not be binding on Obligees and will not apply to this Contract.

Section 10.09 Cancellation for Conflict of Interest. In accordance with Arizona Revised Statutes Section 38-511, within three years after the execution of this Contract by a political subdivision, department, or agency, such Contract is subject to cancellation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract is, at any time while the Contract is in effect, an employee or agent of any other party to the Contract in any capacity or a consultant to any other party to this Contract with respect to the subject matter of the Contract.

Section 10.10 Arizona Immigration Law Compliance. Obligee hereby represents and warrants that Obligee complies with the federal immigration laws and regulations, and with Arizona Revised Statutes Section 23-214(A). A breach of this warranty shall be deemed a material breach of this Contract, subject to penalty of termination of this Contract by the Obligor, in its sole discretion. Subject to reasonable prior written notice, Obligor retains the legal right to inspect the papers of any Obligee employee who works on the Contract to ensure compliance with this warranty.

Section 4, Item B.

Section 10.11 Participation in Israel Boycott. In accordance with Arizona Revised Statutes Sections 35-393.01, Obligee certifies that Obligee does not participate in, and agrees not to participate in during the term of the Contract, a boycott of Israel.

Section 10.12 Forced Labor of Ethnic Uyghurs Prohibited. Pursuant to A.R.S. § 35-394, Obligee hereby certifies to the Obligor as follows: that it is not currently using, and agrees for the duration of this Contract to not use: (1) the forced labor of ethnic Uyghurs in the People’s Republic of China; (2) any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China; and (3) any contractors, subcontractors, or suppliers that use the forced labor of ethnic Uyghurs in the People’s Republic of China. The Obligee further acknowledges and agrees that: (1) if the Obligee becomes aware during the term of this Contract that it is not in compliance with this certification that the Obligee will notify the Obligor within five (5) business days after becoming aware of the noncompliance; and (2) if the Obligee does not provide the Obligor with a written certification that the Obligee has remedied the noncompliance within one hundred eighty (180) days after giving notice thereof (“Remedy Period”), the same shall constitute a material breach of this Contract, which shall then terminate automatically, except that if the Contract termination date occurs before the end of the Remedy Period, this Contract terminates on the Contract’s termination date. The Obligor retains the legal right to inspect the records of the Obligee to ensure compliance with this certification for the duration of this Contract.

Obligees and Obligor have caused this Contract to be executed in their names by their duly authorized representatives listed below.

City of Douglas, Arizona

KS StateBank

Signature

Printed Name and Title

Signature

Jaymie Paavola-Luckert, Vice President

Printed Name and Title

EXHIBIT A

DESCRIPTION OF EQUIPMENT

RE: Government Obligation Contract dated as of January 15, 2023, between KS StateBank (Obligee) and City of Douglas, Arizona (Obligor)

Below is a detailed description of all the items of Equipment including quantity, model number and serial number where applicable:

One (1) Caterpillar 930M Wheel Loader, PIN: CAT0930MCKTG02026

Physical Address of Equipment after Delivery : _____

EXHIBIT B

PAYMENT SCHEDULE

RE: Government Obligation Contract dated as of January 15, 2023, between KS StateBank (Obligee) and City of Douglas, Arizona (Obligor)

Date of First Payment:	At Closing
Original Balance:	\$200,334.42
Total Number of Payments:	Ten (10)
Number of Payments Per Year:	Two (2)

Pmt No.	Due Date	Contract Payment	Applied to Interest	Applied to Principal	*Purchase Option Price
1	At Closing	\$22,387.86	\$0.00	\$22,387.86	\$180,917.12
2	15-Aug-23	\$22,387.86	\$4,555.43	\$17,832.43	\$162,527.53
3	15-Feb-24	\$22,387.86	\$4,098.92	\$18,288.94	\$143,731.53
4	15-Aug-24	\$22,387.86	\$3,630.73	\$18,757.13	\$124,520.14
5	15-Feb-25	\$22,387.86	\$3,150.54	\$19,237.32	\$104,884.18
6	15-Aug-25	\$22,387.86	\$2,658.07	\$19,729.79	\$84,814.26
7	15-Feb-26	\$22,387.86	\$2,152.99	\$20,234.87	\$64,300.80
8	15-Aug-26	\$22,387.86	\$1,634.97	\$20,752.89	\$43,333.99
9	15-Feb-27	\$22,387.86	\$1,103.70	\$21,284.16	\$21,903.81
10	15-Aug-27	\$22,387.86	\$558.83	\$21,829.03	\$0.00

City of Douglas, Arizona

Signature

Printed Name and Title

*Assumes all Contract Payments due to date are paid

EXHIBIT C

CERTIFICATE OF ACCEPTANCE

RE: Government Obligation Contract dated as of January 15, 2023, between KS StateBank (Obligee) and City of Douglas, Arizona (Obligor)

I, the undersigned, hereby certify that I am a duly qualified representative of Obligor and that I have been given the authority by the Governing Body of Obligor to sign this Certificate of Acceptance with respect to the above referenced Contract. I hereby certify that:

1. The Equipment described on Exhibit A has been delivered and installed in accordance with Obligor's specifications.
2. Obligor has conducted such inspection and/or testing of the Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes.
3. Obligor has appropriated and/or taken other lawful actions necessary to provide moneys sufficient to pay all Contract Payments required to be paid under the Contract during the current Budget Year of Obligor, and such moneys will be applied in payment of all Contract Payments due and payable during such current Budget Year.
4. Obligor has obtained insurance coverage as required under the Contract from an insurer qualified to do business in the State.
5. No event or condition that constitutes or would constitute an Event of Default exists as of the date hereof.
6. The governing body of Obligor has approved the authorization, execution and delivery of this Contract on its behalf by the authorized representative of Obligor who signed the Contract.
7. Please list the Source of Funds (Fund Item in Budget) for the Contract Payments that come due under Exhibit B of this Contract.

Source of Funds : General Fund

By signing below, Obligor hereby authorizes the General Fund of the Obligor as a backup source of funds from which the Contract Payments can be made.

City of Douglas, Arizona

Signature

Printed Name and Title

EXHIBIT D

OBLIGOR RESOLUTION

RE: Government Obligation Contract dated as of January 15, 2023, between KS StateBank (Obligee) and City of Douglas, Arizona (Obligor)

At a duly called meeting of the Governing Body of the Obligor (as defined in the Contract) held on _____ the following resolution was introduced and adopted:

BE IT RESOLVED by the Governing Body of Obligor as follows:

- 1. **Determination of Need.** The Governing Body of Obligor has determined that a true and very real need exists for the acquisition of the Equipment described on Exhibit A of the Government Obligation Contract dated as of January 15, 2023, between City of Douglas, Arizona (Obligor) and KS StateBank (Obligee).
- 2. **Approval and Authorization.** The Governing Body of Obligor has determined that the Contract, substantially in the form presented to this meeting, is in the best interests of the Obligor for the acquisition of such Equipment, and the Governing Body hereby approves the entering into of the Contract by the Obligor and hereby designates and authorizes the following person(s) to execute and deliver the Contract on Obligor’s behalf with such changes thereto as such person(s) deem(s) appropriate, and any related documents, including any Escrow Agreement, necessary to the consummation of the transaction contemplated by the Contract.

Authorized Individual(s):

(Typed or Printed Name and Title of individual(s) authorized to execute the Contract)

- 3. **Adoption of Resolution.** The signatures below from the designated individuals from the Governing Body of the Obligor evidence the adoption by the Governing Body of this Resolution.

Signature:

(Signature of Board Chairman or other authorized member of the Obligor's Governing Body)

Printed Name & Title:

(Printed Name and Title of individual who signed directly above)

Attested By:

(Signature of Obligor's Board Secretary or Board Clerk)

Printed Name & Title:

(Printed Name of individual who signed directly above)

EXHIBIT E

BANK QUALIFIED CERTIFICATE

RE: Government Obligation Contract dated as of January 15, 2023, between KS StateBank (Obligee) and City of Douglas, Arizona (Obligor)

Whereas, Obligor hereby represents that it is a "Bank Qualified" Issuer for the calendar year in which this Contract is executed by making the following designations with respect to Section 265 of the Internal Revenue Code of 1986, as amended (the "Code"). (A "Bank Qualified Issuer" is an issuer that issues less than ten million (\$10,000,000) dollars of tax-exempt obligations other than "private activity bonds" as defined in Section 141 of the Code, excluding certain "qualified 501(c)(3) bonds" as defined in Section 145 of the Code, during the calendar year).

Now, therefor, Obligor hereby designates this Contract as follows:

1. **Designation as Qualified Tax-Exempt Obligation.** Pursuant to Section 265(b)(3)(B)(i) of the Code, the Obligor hereby specifically designates the Contract as a "qualified tax-exempt obligation" for purposes of Section 265(b)(3) of the Code. In compliance with Section 265(b)(3)(D) of the Code, the Obligor hereby represents that the Obligor will not designate more than \$10,000,000 of obligations issued by the Obligor in the calendar year during which the Contract is executed and delivered as such "qualified tax-exempt obligations".
2. **Issuance Limitation.** In compliance with the requirements of Section 265(b)(3)(C) of the Code, the Obligor hereby represents that the Obligor (including all subordinate entities of the Obligor within the meaning of Section 265(b)(3)(E) of the Code) reasonably anticipates not to issue in the calendar year during which the Contract is executed and delivered, obligations bearing interest exempt from federal income taxation under Section 103 of the Code (other than "private activity bonds" as defined in Section 141 of the Code and excluding certain "qualified 501(c)(3) bonds" as defined in Section 145 of the Code) in an amount greater than \$10,000,000.

City of Douglas, Arizona

Signature

Printed Name and Title

INSURANCE REQUIREMENTS

Section 4, Item B.

Pursuant to Article V of the Government Obligation Contract, you have agreed to provide us evidence of insurance covering the Equipment.

A Certificate of Insurance listing the information stated below should be sent to us no later than the date on which the equipment is delivered.

Insured:	Certificate Holder:
City of Douglas, Arizona	KS StateBank
425 East 10th Street	1010 Westloop, P.O. Box 69
Douglas, Arizona 85604	Manhattan, Kansas 66505-0069

- 1. Equipment Description**
 - ◆ One (1) Caterpillar 930M Wheel Loader, PIN: CAT0930MCKTG02026
 - ◆ Please include all applicable VIN's, serial numbers, etc.
- 2. Deductible**
 - ◆ The deductible amounts on the insurance policy should not exceed \$25,000.00.
- 3. Physical Damage**
 - ◆ All risk coverage to guarantee proceeds of at least \$200,334.42.
- 4. Liability**
 - ◆ Minimum Combined Single Limit of \$1,000,000.00 on bodily injury and property damage.
- 5. Additional Insured and Loss Payee**
 - ◆ KS StateBank AOIA (and/or Its Assigns) MUST be listed as additional insured and loss payee.

Please forward certificate as soon as possible to: Email: dshandy@ksstate.bank
or
Fax: (785) 587-4016

Please complete the information below and return this form along with the Contract.

City of Douglas, Arizona

Insurance Company: _____

Agent's Name: _____

Telephone #: _____

Fax #: _____

Address: _____

City, State Zip: _____

Email: _____

*As an additional payment option for Obligor, we are now providing the option of ACH (Automatic Clearing House). By completing this form, Obligor is authorizing Obligee to withdraw said payment amount on said date.

DEBIT AUTHORIZATION

I hereby authorize KS StateBank Government Finance Department to initiate debit entries for the Payment Amount (including, but not limited to, any late fees, rate changes, escrow modifications, etc.). I acknowledge that KS StateBank Government Finance Department may reinitiate returned entries up to two additional times, to the account indicated below at the financial institution named below and to debit the same to such account for:

Contract Number 3361296	Payment Amount \$22,387.86	Frequency of Payments Semi-Annual
Beginning _____ Month Year	Day of Month Debits will be made according to Exhibit B of the Contract	

I acknowledge that the origination of ACH transactions to this account must comply with the provisions of U.S. law.

Financial Institution Name		Branch	
Address	City	State	Zip
Routing Number		Account Number	

Type of Account Checking Savings

If the account does not have sufficient funds, KS StateBank Government Finance Department may attempt, but shall have no obligation to continue to attempt to deduct the payment from the account. If the account has insufficient funds when KS StateBank Government Finance Department attempts to deduct a payment, KS StateBank Government Finance Department may terminate the automatic deduction of payments upon notice to borrower and me. Until such time as payment is made, borrower shall be responsible to make such payments, and all other payments that may be due to KS StateBank Government Finance Department regarding the above-referenced loan.

This authority is to remain in full force and effect until KS StateBank has received written notification from any authorized signer of the account of its termination in such time and manner as to afford KS StateBank a reasonable opportunity to act on it.

Obligor Name on Contract City of Douglas, Arizona	
Signature	Printed Name and Title
Tax ID Number 86-6000241	Date

PLEASE ATTACH COPY OF A VOIDED CHECK TO THIS FORM!

USA Patriot Act

USA Patriot Act requires identity verification for all new accounts. This means that we may require information from you to allow us to make a proper identification.

INVOICE

DATE SENT: 02-14-2023

BILL TO:
 CITY OF DOUGLAS, ARIZONA
 ATTN: ACCOUNTS PAYABLE
 425 EAST 10TH STREET
 DOUGLAS, ARIZONA 85604

REMIT TO:
 KS STATEBANK
 GOVERNMENT FINANCE DEPARTMENT
 PO BOX 1608
 MANHATTAN, KS 66505
 FOR INQUIRIES: (877) 587-4054
NOTE: The address listed above is for payments only

ACCOUNT NUMBER	INVOICE NUMBER	PAYMENT DATE	PAYMENT DUE DATE	TOTAL AMOUNT DUE
3361296	61296-02-2023	At Closing	At Closing	\$22,387.86

DESCRIPTION	AMOUNT
GOVERNMENT OBLIGATION CONTRACT DATED AS OF JANUARY 15, 2023 ONE (1) CATERPILLAR 930M WHEEL LOADER, PIN: CAT0930MCKTG02026 <p style="text-align: center;"><i>Additional interest will be assessed on any payment received after the due date.</i></p>	PAYMENT AMOUNT: \$22,387.86
	\$22,387.86
	TOTAL DUE

The 8038 form attached hereto is an important part of the documentation package and must be properly filled out and submitted to the Department of the Treasury in order for you to receive the lower tax-exempt rate. Unless you instruct us otherwise, we have engaged a Paid Preparer to assist in the filling out of this form. The Paid Preparer has filled out the relevant portions of this form based on the current understanding of what is required by the Department of the Treasury. The responses on this 8038 form are based on the dates and amounts which you have requested (structure of the transaction) and which are on the Payment Schedule.

1. Please review our responses for accuracy. If anything is inaccurate, please contact our office so that we can make proper revisions.
2. If the information provided to you on this form is accurate, please sign where indicated and return with the document package.
3. If there are any changes to the structure of the transaction that occur prior to funding which require a change to the 8038 form, we will make such changes and provide notification to you.
4. We will return to you a copy of the 8038 form that was mailed to the Department of the Treasury.

Important Note:

The IRS is now requesting information regarding tax-exempt issuers' and borrowers' written policies and procedures designed to monitor post-issuance compliance with the federal tax rules applicable to tax-exempt obligations (boxes 43 and 44). Do not check items 43 and 44 on the 8038 form unless you have established written procedures in accordance with the instructions referenced directly below. If you choose to "check" items 43 and/or 44, please be prepared to provide copies of such written procedures to the Paid Preparer or any representatives of the IRS upon request. Written procedures should contain certain key characteristics, including making provisions for:

- Due diligence review at regular intervals;
- Identifying the official or employee responsible for review;
- Training of the responsible official/employee;
- Retention of adequate records to substantiate compliance (e.g., records relating to expenditure of proceeds);
- Procedures reasonably expected to timely identify noncompliance; and
- Procedures ensuring that the issuer will take steps to timely correct noncompliance.

For additional guidance on this 8038 form, you can refer to the Documentation Instructions located on the following government website: <http://www.irs.gov/app/picklist/list/formsInstructions.html>, or contact your local IRS office.

Information Return for Tax-Exempt Governmental Obligations

▶ Under Internal Revenue Code section 149(e)
▶ See separate instructions.

Section 4, Item B.

Department of the Treasury
Internal Revenue Service

Caution: If the issue price is under \$100,000, use Form 8038-GC.
▶ Go to www.irs.gov/F8038G for instructions and the latest information.

Part I Reporting Authority		Check box if Amended Return <input type="checkbox"/>
1 Issuer's name City of Douglas, Arizona		2 Issuer's employer identification number (EIN) 86-6000241
3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions)		3b Telephone number of other person shown on 3a
4 Number and street (or P.O. box if mail is not delivered to street address) 425 East 10th Street	Room/suite	5 Report number (For IRS Use Only) 3
6 City, town, or post office, state, and ZIP code Douglas, Arizona 85604		7 Date of issue 02/15/2023
8 Name of issue Government Obligation Contract		9 CUSIP number None
10a Name and title of officer or other employee of the issuer whom the IRS may call for more information Mr. Alejandro Martinez, Finance Director		10b Telephone number of officer or other employee shown on 10a (520) 417-7320

Part II Type of Issue (enter the issue price). See the instructions and attach schedule.		
11 Education	11	
12 Health and hospital	12	
13 Transportation	13	
14 Public safety	14	
15 Environment (including sewage bonds)	15	
16 Housing	16	
17 Utilities	17	
18 Other. Describe ▶ <u>One (1) Caterpillar 930M Wheel Loader</u>	18	200,334 42
19 If obligations are TANs or RANs, check only box 19a <input type="checkbox"/>		
If obligations are BANs, check only box 19b <input type="checkbox"/>		
20 If obligations are in the form of a lease or installment sale, check box <input checked="" type="checkbox"/>		

Part III Description of Bonds. Complete for the entire issue for which this form is being filed.				
(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21 08/15/2027	\$ 200,334.42	\$ N/A	4.500 years	5.120 %

Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)				
22 Proceeds used for accrued interest	22			
23 Issue price of entire issue (enter amount from line 21, column (b))	23			
24 Proceeds used for bond issuance costs (including underwriters' discount)	24			
25 Proceeds used for credit enhancement	25			
26 Proceeds allocated to reasonably required reserve or replacement fund	26			
27 Proceeds used to refund prior tax-exempt bonds. Complete Part V.	27			
28 Proceeds used to refund prior taxable bonds. Complete Part V.	28			
29 Total (add lines 24 through 28)	29			
30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	30			

Part V Description of Refunded Bonds. Complete this part only for refunding bonds.	
31 Enter the remaining weighted average maturity of the tax-exempt bonds to be refunded	_____ years
32 Enter the remaining weighted average maturity of the taxable bonds to be refunded	_____ years
33 Enter the last date on which the refunded tax-exempt bonds will be called (MM/DD/YYYY)	_____
34 Enter the date(s) the refunded bonds were issued (MM/DD/YYYY)	_____

For Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 63773S

Form **8038-G** (Rev. 10-2021)

Part VI Miscellaneous

35 Enter the amount of the state volume cap allocated to the issue under section 141(b)(5)	35		
36a Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC) (see instructions)	36a		
b Enter the final maturity date of the GIC ▶ (MM/DD/YYYY) _____			
c Enter the name of the GIC provider ▶ _____			
37 Pooled financings: Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units	37		
38a If this issue is a loan made from the proceeds of another tax-exempt issue, check box <input type="checkbox"/> and enter the following information:			
b Enter the date of the master pool bond ▶(MM/DD/YYYY) _____			
c Enter the EIN of the issuer of the master pool bond ▶ _____			
d Enter the name of the issuer of the master pool bond ▶ _____			
39 If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box			<input checked="" type="checkbox"/>
40 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box			<input type="checkbox"/>
41a If the issuer has identified a hedge, check here <input type="checkbox"/> and enter the following information:			
b Name of hedge provider ▶ _____			
c Type of hedge ▶ _____			
d Term of hedge ▶ _____			
42 If the issuer has superintegrated the hedge, check box			<input type="checkbox"/>
43 If the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated according to the requirements under the Code and Regulations (see instructions), check box			<input type="checkbox"/>
44 If the issuer has established written procedures to monitor the requirements of section 148, check box			<input type="checkbox"/>
45a If some portion of the proceeds was used to reimburse expenditures, check here <input type="checkbox"/> and enter the amount of reimbursement. ▶ _____			
b Enter the date the official intent was adopted ▶ (MM/DD/YYYY) _____			

Signature and Consent

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person that I have authorized above.

▶ _____ ▶ _____
 Signature of issuer's authorized representative Date Type or print name and title

Paid Preparer Use Only	Print/Type preparer's name H. Evan Howe	Preparer's signature HEvanHowe <small>Digitally signed by HEvanHowe DN: cn=HEvanHowe, o=Baystone Bank Reason: I am the author of this document Date: 2023.02.14 16:19:21-0600 File: PDF Editor Version 12.1.0</small>	Date 02/14/2023	Check <input type="checkbox"/> if self-employed	PTIN P01438994
	Firm's Name ▶ Baystone Financial LLC		Firm's EIN ▶ 48-1223987		
	Firm's Address ▶ 10601 Mission Road, Suite 200, Leawood, KS 66206		Phone no. (800) 752-3562		

SUBMITTED BY: William D. Osborne, AICP, City Planner

MANAGEMENT TEAM REVIEW: Ana Urquijo, City Manager

FOCUS AREA: Advanced Infrastructure Development and Improvement

ORGANIZATIONAL IMPROVEMENTS: EnterTextHere

SUBJECT: **PRESENTATION/DISCUSSION on ZONING CODE TEXT and MAP AMENDMENTS.**

EXECUTIVE SUMMARY:

The purpose on Zoning Code Text and Zoning Districts Map Amendments is to align intention and regulations supporting development and redevelopment of residential and commercial properties while providing staff more administrative authority to expedite decisions and interpretations on certain land use, zoning, and development requests and issues.

BACKGROUND:

- a. On ZMA-2022-05 Eastside Subdivision Block 12 Zoning Districts Map Amendment from LC to MFR. Recognizing developments of single-family residences on Limited Commercial-zoned properties between 2019 and 2021, and demand for affordable housing, Encarnacion Baez hereby proposes to rezone all of Eastside Subdivision Block 12 to MFR, consistent with multi-family residential zoning in the area (Assessor's Parcel Numbers (APN 40915012A, 40915012B, 40915012C, 40915013E, 40915013J, 40915013H, 40915013G, 40915013K, 40915013L, 40915013M)).
- b. On ZCA-2023-01 Administrative Codes Text Amendment. Updating, revising, and amending code text in several articles of the Zoning Code (Articles 1, 2, 3, 4, 10 of DMC Title 17 and Chapter 15.08) to correct omissions and errors in numeration, spelling, and recognize practical organizational changes and authorities, improve definitions of minor decisions and increase flexibility for and clarity of processes for administrative approvals.
- c. On ZCA-2023-02 Mixed-Use/Infill Development (MUI) Overlay Zoning District Code Text Amendment. Revise the requirements of DMC§17.05.515 MUI – Mixed-Use/Infill Development Overlay Zoning District to better align intentions and desired results, allowing for lot sizes of 3,000 square feet, and relaxing eligibility for infill and mixed-use development to include parcel sizes meeting the underlying zoning district minimum, and location along arterial streets.
- d. On ZCA-2023-03 Innovative Community Overlay Zoning Districts Code (IC-R, IC-C, IC-MU) Text Amendment. Creation of a new series of overlay districts proposed as DMC§17.05.516 that may be designated by zoning district map amendments in areas to address contemporary challenges to diversity of affordable housing choices, significant non-conformity in the Mobile Home Residence Zoning District, and for many smaller commercially-zoned parcels that current suburban standards for property development, landscaping, and parking make non-conforming for improvements. Also, these overlay districts recognize the need to encourage development of more walkable neighborhoods served by housing and commercial uses in close proximity.
- e. On ZMA-2023-01 Overlock, Stetler, Kline-Ewell Subdivision of Stetler, and Sunnyside Additions MHR Zoning Districts Map Amendment to include IC-R, IC-C, and IC-MU Overlay Zoning Districts. Placing overlay zoning districts as provided in ZCA-2023-03 to allow for housing alternatives to mobile homes, and commercial and mixed commercial and residential uses where they are located along North A Avenue with development standards suited to continuation, maintenance, improvements, and new development and uses of vacant properties. This proposal is applicable to all parcels within the following: Overlock Addition Blocks 1-16, Stetler's Addition Blocks 1, 2, 8-12, Kline-Ewell Subdivision of Stetler's Addition Blocks 2-7, 11 and Sunnyside Addition Blocks 1-8.

- f. On ZMA-2023-02 North A Avenue Zoning Districts Map Amendment of GC – General Commercial District to include IC-C – Innovative Community-Commercial Overlay Zoning District. This proposal addresses to address the mismatch of existing General Commercial suburban dimensional development standards and that most parcels along the west side of N. A Avenue are substandard in size by placing an overlay that will recognize the scale of existing development and encourage more pedestrian-oriented development. The property at the southeast corner of E. 17th Street and N. A Avenue would also be included within this proposed overlay.
- g. On ZMA-2023-03 Eastside IC-MU Overlay Zoning Districts Map Amendment of Limited Commercial, Multi-Family Residential and General Commercial. Recognizing that LC – Limited Commercial Zoning and GC – General Commercial Zoning, and MFR – Multifamily Residential Zoning has largely been ineffective in the Subject Areas of Eastside Addition Block 15, Foothills Addition Blocks 9 & 10, Frontier Village Addition Block 1, and McCullar’s Addition Blocks 6, 10 & 11, an IC-MU Innovative Community-Mixed-Use Overlay Zoning District is proposed to increase effective opportunities for pedestrian-oriented residential and mixed-use development.
- h. On ZMA-2023-04 Country Club Addition Block 3, Lots 19-36 IC-MU Overlay Zoning Districts Map Amendment of GC District. This proposal encourages inclusion of housing as part of mixed-use development near schools and recreational amenities.
- i. On ZMA-2023-05 Applewhite Addition Block 1, Lot 8 IC-C Overlay Zoning Districts Map Amendment of LC District. This proposal encourages flexibility in developing a commercial use at a vacant triangular corner lot.
- j. On ZMA-2023-06 Eastside Addition Block 3, Lots 7-10 and Block 8, Lots 7 & 8 IC-MU Overlay Zoning Districts Map Amendment of LC District. This proposal recognizes existing multi-family residential development and offers the possibility of mixing commercial and residential uses, with more relaxed development standards.
- k. On ZMA-2023-07 Musgrave Addition Block 38, Lots 9-16 and Block 39, Lots 9-16 IC-MU Overlay Zoning Districts Map Amendment of LC District. This proposal offers the possibility of mixed-use to achieve commercial development that otherwise would be out of scale and context with neighboring residential use.

DISCUSSION:

Presentation only.

FISCAL IMPACT:

Fiscal Year: 2022/2023

Amount Requested:

Budgeted: Y / N

Account (s):