

**PURCHASE AND SALE AGREEMENT  
AND  
ESCROW INSTRUCTIONS**

This Purchase and Sale Agreement and Escrow Instructions (“Agreement”) is entered into and is effective as of \_\_\_\_\_, 2023, by and between the City of Douglas, an Arizona municipal corporation (“Seller” or “City”), and JW Resources, LLC, an Arizona limited liability company or its nominee (“Buyer”), on the following terms and conditions contained herein.

**RECITALS**

WHEREAS, the City is in the owner of real property located at 3200 E. 10<sup>th</sup> Street, Douglas, Cochise County, Arizona commonly referred to as the Douglas Municipal Airport (“Airport”); and

WHEREAS, in compliance with the City Charter and A.R.S. §9-402, an invitation for bids for the purchase of a portion of the Airport was published and Buyer was the successful bidder; and

WHEREAS, the Seller and Buyer enter into this Agreement to set forth the rights and obligations of Buyer and Seller with respect to the purchase and sale and future development of the Airport Property.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual promises and covenants set forth herein, and for other consideration, the receipt and adequacy of which is hereby acknowledged, the City and Buyer agree as follows:

1. Sale and Purchase. On the terms and conditions contained in this Agreement, Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller, the real property located at 3200 E. 10<sup>th</sup> Street, Douglas, Cochise County, less the City Retained Property (defined in Section 5.03), and legally described and depicted on Exhibit A, together with all of Seller’s rights, title and interest in and to (a) the improvements, structures and fixtures located thereon (b) all appurtenances, hereditaments, easements, rights-of-way, reversions, remainders, development rights, well rights, water rights and air rights; (c) all oil, gas, and mineral rights not previously reserved; and (d) any other rights or privileges appurtenant to such real property (collectively, 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” or “Escrow Agent”) to facilitate the consummation of the sale of the Property. This Agreement shall also serve as escrow instructions to Title Company. The Seller and Buyer shall provide additional instructions reasonably requested by 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; Broker Fee.

3.01 Purchase Price. The purchase price ("Purchase Price") to be paid by Buyer for the Property shall be Two Million Ninety-Six Thousand and 00/100 Dollars (\$2,096,000.00). The Purchase Price shall be paid as follows:

(a) Within three (3) business days after the execution of this Agreement by Seller, Buyer and Title Company, Buyer shall deposit an earnest money deposit of Fifty Thousand and No/100 Dollars (\$50,000.00) by wire transfer of immediately available funds or Buyer's check with immediately available funds payable to Escrow Agent (the "Earnest Money"). The Earnest Money shall become non-refundable to Buyer at the expiration of the Feasibility Period (as defined in Section 6.02(b)), except as otherwise provided in this Agreement.

(b) The balance of the Purchase Price, subject to prorations and adjustments as described herein, shall be deposited by Buyer with Escrow Agent, in cash or immediately available funds ("Cash Payment"), on or before the Close of Escrow.

If the transaction contemplated hereby is consummated in accordance with the terms and provisions hereof, the Earnest Money shall be credited toward the Purchase Price at Closing. If the transaction is not so consummated, the Earnest Money shall be held and delivered by the Title Company as hereinafter provided.

3.02 Broker Fees. Buyer shall be responsible for and pay any real estate broker fees in this transaction that have been legally determined to be due an owning by Buyer

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 is in possession of a fully executed Agreement and the Earnest Money. 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. Subject to the Conditions Precedent set forth in Section 8 and Section 9, the closing of this transaction and escrow (the "Closing" or "Close of Escrow") shall occur within thirty (30) days after the expiration of the Feasibility Period (as defined in Section 6.02(b)), unless an extension is otherwise agreed to in writing by both Parties. Buyer has the right, in Buyer's sole discretion, to Close Escrow on or before the expiration of the Feasibility Period.

## 5. Title

5.01 Status of Title. Within ten (10) business days after Opening of Escrow, or as soon thereafter as possible, Title Company shall provide Buyer and Seller with a current commitment for title insurance (the "Title Commitment") for the Property, disclosing all matters of record and other matters of which Title Company has knowledge which relate to the title to the Property, and a legible copy of each of the instruments and documents referred to in the Title Commitment. The Title Commitment shall include Title Company's requirements for Closing and issuing its title policy. Seller shall satisfy those requirements of Seller requiring a release of consensual monetary encumbrances on or before the Closing. Buyer shall have ten (10) business days after receipt of the Title Commitment and copies of all instruments and documents referred to in the Title Commitment, or five (5) business days after the receipt of any amendment thereto and copies of all instruments and documents referred to therein, to object in writing to Seller to any matter shown thereon. If Buyer fails to object within said period, the condition of title to the Property shall be deemed approved. If Buyer timely objects to any matter disclosed by the Title Commitment or any amendment thereto, the Seller may, but is not obligated, to use reasonable efforts to cure such objection(s) (although in no event shall the Seller be required to expend funds) within fifteen (15) business days thereafter. If, within such fifteen (15) business day period, the Seller is unsuccessful or responds that it is unwilling to cure Buyer's objection(s), Buyer shall have five (5) business days following notice from the Seller of its inability or unwillingness to cure in which Buyer shall elect by delivering written notice to the Seller and Title Company either to (a) waive its objection(s); or (b) terminate this Agreement. If Buyer elects to terminate this Agreement, Title Company shall deliver the Earnest Money to Buyer, less Fair Consideration (defined in Section 6.02(b)) without further notice to or from the Seller and neither party shall thereafter have any further rights or obligations hereunder 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 the Seller to give any notice shall constitute the Seller's election not to cure. Notwithstanding anything else stated herein, in all events, regardless of whether Buyer has given notice of objection as stated above, the Seller shall be obligated to satisfy and otherwise remove all monetary and financial liens and encumbrances in existence at the time of execution of this Agreement or incurred by the Seller on or before Closing hereunder (other than current taxes not yet due). Any title exceptions which have not been objected to or waived by Buyer shall be called "Permitted Title Exceptions."

5.02 Title Policy. At Closing, Title Company shall furnish to Buyer a standard 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 usual printed exceptions contained in such title insurance policies and those matters approved by Buyer pursuant to Section 5.01. The Seller shall pay the premium for a standard coverage owner's policy. If Buyer wants an ALTA extended coverage owner's policy of title insurance, Buyer shall pay the difference in premium cost between an ALTA extended coverage and a standard owner's policy and the cost of any endorsements requested by Buyer.

5.03 Survey; City Retained Property. Upon the Arizona Department of Transportation's approval of the amended Airport Layout Plan ("ALP"), Seller, at its sole cost,

will obtain a current survey of the Property ("Survey"), which Seller will provide to Buyer. The Survey shall delineate new property boundaries which shall be retained and owned by the City ("City Retained Property"). The City Retained Property is identified on Exhibit B, which is incorporated herein by reference.

6. Preliminary Due Diligence; Examination of Property.

6.01 Preliminary Due Diligence. Within five (5) business days after the Opening of Escrow, or as soon thereafter as possible, Seller shall provide to Buyer the following information (the "Property Information"), to the extent the Property Information is in the Seller's 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, 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, and other information Seller may have in its possession concerning the Property ("Preliminary Items of Due Diligence").

The 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 respective officials, officers, directors, 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 officials, officers, directors, 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 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 Close of Escrow. All expenses incurred in connection with the exercise of such license by Buyer shall be the responsibility of Buyer. Prior to entry upon the Property, Buyer shall deliver to Seller a currently effective certificate of commercial general liability insurance with a minimum combined single limit of \$1,000,000 and a minimum aggregate limit of \$2,000,000. Seller shall be named an additional insured under such insurance policy and such

policy shall not be cancellable without thirty days' notice to Seller and shall be underwritten by an insurer reasonably acceptable to Seller.

(b) Notwithstanding any provisions to the contrary, Buyer may terminate this Agreement for any reason, by either delivering written notice of such termination to Seller and Title Company on or before last day of the Feasibility Period. The period between the Opening of Escrow and the date ninety (90) days thereafter shall be the "Feasibility Period." If Buyer elects to terminate this Agreement pursuant to this Section 6.02(b) the Title Company shall deliver the Earnest Money, less the sum of \$5,000, to be paid to Seller as fair consideration for this Agreement ("Fair Consideration") to Buyer without further notice to or from Seller and neither party shall have any further rights or obligations except those rights and obligations that survive the termination of this Agreement or the Close of Escrow as provided in this Agreement.

7. Representations and Warranties.

7.01 Seller's Representations and Warranties. The Seller makes the following representations and warranties, all of which shall be true and correct at the Closing and which shall not survive Closing:

(a) To the Seller's actual knowledge, and except as reflected in the Title Documents, there are no claims, actions, suits, or other proceedings pending or threatened or any governmental department or agency or any other corporation, partnership, entity or person whomsoever, nor any voluntary actions or proceedings contemplated by the Seller, which in any manner or to any extent may detrimentally affect Buyer's right, title or interest in and to the Property, or the Seller's ability to perform the Seller's obligations under this Agreement.

(b) The Seller has the full power and authority to enter into and perform this Agreement according to the terms hereof and the individuals executing this Agreement and all documents delivered pursuant to this Agreement on behalf of the Seller are authorized to do so.

(c) To the Seller's actual knowledge, Seller has good and indefeasible title in fee simple to the Property. The Property has not been assigned or conveyed to any party. Except as reflected in the Title Documents, there are no agreements (other than this Agreement), commitments or understandings by or between the Seller and any third party pursuant to which the Seller or its successors in interest are required to convey, dedicate, sell or transfer any part of the Property or to grant any easement, water right, right-of-way, road or license in respect to any part of the Property.

(d) To the Seller's actual knowledge, the Seller has not received any notices and the Seller is not otherwise aware that the Property was not or is not in compliance with all federal, state of Arizona and local laws, ordinances and regulations relating to environmental protection, occupational health and safety, public health and safety or public nuisance or menace (collectively "Environmental Laws"). To the Seller's actual knowledge there has been no production, storage, transport, release, spillage or disposal upon the Property of any hazardous substances, hazardous waste, hazardous materials, toxic substances, contaminants, or any other substances declared to be hazardous or toxic under any Environmental Laws, except for spillage

of aircraft fuel that may occur in the normal course of airplanes fueling and locating on the Property.

(e) To the Seller's actual knowledge, there is no pending or threatened condemnation or similar proceedings affecting the Property or any part thereof and the Seller has no knowledge that any such proceeding is presently contemplated.

(f) This Agreement and all documents required hereby to be executed by the Seller are and shall be valid, legally binding obligations of, and enforceable against the Seller, in accordance with their terms.

(g) Except as otherwise expressly set forth in this Agreement and the Deed, neither the Seller nor its officials, officers, employees, agents, representatives, attorneys or contractors (collectively "Seller's Parties") have made any representations, guaranties, promises, assurances or warranties, express or implied, to Buyer including, without limitation, any pertaining to the suitability of the Property for any purpose, the profitability of owning or operating the Property, the physical or environmental condition thereof, the suitability, habitability or merchantability or fitness of the Property for Buyer's intended use or for any use whatsoever, the rentals, income or expenses thereof, the net or gross acreage contained therein, the zoning thereof, the condition of title thereto, the existence or satisfaction of any local, state or federal approvals or permits for the development or use thereof, the availability or existence of water, sewer or other utilities, the existence or nonexistence of any hazardous substances or materials in, on or under the Property, or as to any past, present or future matter whatsoever. The Seller acknowledges and agrees that this disclaimer has been specifically negotiated and that the Property will be sold in the condition described in Section 6.01. Buyer acknowledges that it will have the opportunity to inspect the Property during the Feasibility Period, and during such period, observe its physical characteristics and existing conditions and the opportunity to conduct such investigation and study on and the Property and adjacent areas as Buyer deems necessary. Buyer hereby forever releases and discharges Seller from all responsibility and liability, including without limitation, liabilities and responsibilities for matters relating to the physical, environmental or legal compliance status of the Property, whether arising before or after the Effective Date, under the Comprehensive Environmental Response, Compensation and Liability Act Of 1980 (42 U.S.C. Sections 9601 et seq.), as amended ("**CERCLA**"), regarding the condition, valuation, salability, rentability or utility of the Property, or its suitability for any purpose whatsoever (including, but not limited to, with respect to the presence in the soil, air, structures and surface and subsurface waters, of Hazardous Materials or other materials or substances that have been or may in the future be determined to be toxic, hazardous, undesirable or subject to regulation and that may need to be specially treated, handled and/or removed from the Property under current or future federal, state and local laws, regulations or guidelines, and any structural and geologic conditions, subsurface soil and water conditions and solid and hazardous waste and Hazardous Materials on, under, adjacent to or otherwise affecting the Property). Buyer further hereby waives (and by Closing this transaction will be deemed to have waived) any and all objections and complaints (including, but not limited to, federal, state and local statutory and common law based actions, and any private right of action under any federal, state or local laws, regulations or guidelines to which the Property is or may be subject, including, but not limited to, CERCLA) concerning the physical characteristics and any existing conditions of the Property, including, without limitation, the landlord's obligations under

the Leases relating to the physical, environmental or legal compliance status of the Property, whether arising before or after the Effective Date. Buyer further hereby assumes the risk of changes in applicable laws and regulations relating to past, present and future environmental conditions on the Property and the risk that adverse physical characteristics and conditions, including, without limitation, the presence of Hazardous Materials or other contaminants, may not have been revealed by its investigation. For purposes hereof, "**Hazardous Materials**" means "Hazardous Material," "Hazardous Substance," "Pollutant or Contaminant," and "Petroleum" and "Natural Gas Liquids," as those terms are defined or used in Section 101 of CERCLA, and any other substances regulated because of their effect or potential effect on public health and the environment, including, without limitation, PCBs, lead paint, asbestos, urea formaldehyde, radioactive materials, putrescible materials, and infectious materials.

As used in this Agreement, "To the Seller's actual 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.

7.02 Buyer's Representations and Warranties. Buyer represents and warrants to the Seller:

(a) Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Arizona. Buyer has all requisite power and authority to carry on its business as now conducted, to enter into this Agreement and to carry out and perform its obligations under this Agreement.

(b) The execution and delivery by Buyer of this Agreement and all of the documents and instruments required hereby and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all requisite members or officers on the part of Buyer. This Agreement and each of the other documents and instruments required hereby have been duly executed and delivered by Buyer and constitute the valid and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms.

(c) The execution, delivery, and compliance with and performance by Buyer of this Agreement and each of the other documents and instruments required hereby do not and will not (i) violate the Articles of Organization or Operating Agreement of Buyer; or (ii) violate any law, statute, rule, regulation, order, judgment or decree to which Buyer is subject; or (iii) conflict with or result in a breach of or constitute a default under any contract, agreement or other instrument to which Buyer is a party or by which Buyer or any of Buyer's assets or properties are bound or to which Buyer or any of Buyer's assets or properties are subject.

(d) The execution, delivery and performance by Buyer of this Agreement and each of the other documents and instruments required hereby and the consummation of the transactions contemplated hereby and thereby do not and will not require any authorization, consent, approval, permit, filing, registration or exemption or other action by or notice to any court or administrative or governmental body.

(e) There are no actions, suits, litigation, proceedings or investigations

pending or threatened against Buyer that could materially adversely affect Buyer's ability to perform Buyer's obligations under this Agreement or the consummation of the transactions contemplated by this Agreement.

(f) Buyer acknowledges and agrees that with the aid of independent expert advice it will have had an opportunity to satisfy, prior to the expiration of the Feasibility Period, itself regarding the condition of the Property. 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 any document executed by Seller and delivered to Buyer 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 packages distributed with respect to the Property) 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. Buyer will conduct such inspections and investigations of the Property as Buyer deems necessary, including, but not limited to, the physical and environmental conditions thereof, and shall rely upon same. By failing to terminate this Agreement prior to the expiration of the Feasibility Period, Buyer acknowledges that Seller has afforded Buyer a full opportunity to conduct such investigations of the Property as Buyer deemed necessary to satisfy itself as to the condition of the Property and the existence or non-existence or curative action to be taken with respect to any Hazardous Materials on or discharged from the Property, and will rely solely upon same and not upon any information provided by or on behalf of Seller or its agents or employees with respect thereto, other than such representations, warranties and covenants of Seller as are expressly set forth in this Agreement. 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. Conditions Precedent to the Seller’s Obligations. The obligations of the 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) The Property shall have been rezoned for the development of the Airport consistent with Buyer’s proposal attached hereto as Exhibit C, to include (i) light industrial; (ii) hangar homes; (iii) jet hangar; and (iv) commercial and retail, which will include a restaurant



(“Airport Development”).

(b) Seller shall have obtained written authorization, if required, to enter into this Agreement from all agencies who have provided grant funding to the Airport and the State of Arizona and Federal Aviation Administration must have approved, in writing, the Amended ALP submitted by Seller.

(c) Seller shall have approved of the Survey.

(d) 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.

(e) 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.

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

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

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

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

(d) Title Company shall have irrevocably committed to issue the Title Policy.

10. Remedies.

10.01 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, the Seller shall be entitled as its sole remedy to terminate this Agreement and Title Company shall deliver to the Seller the Earnest Money as liquidated damages and not as penalty, in full satisfaction of claims against Buyer hereunder. The Seller and Buyer agree that the Seller’s damages resulting from Buyer’s default are difficult, if not impossible, to determine and the amount of the Earnest Money is a fair estimate of those damages which has been agreed to in

an effort to cause the amount of said damages to be certain. Nothing in this Section shall limit the Seller's right to recover attorneys' fees under Section 10.03 below.

10.02 Buyer's Remedies. If the Seller (1) 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), or (2) breaches a representation and warranty, then the Seller shall be in default under this Agreement and, as Buyer's sole and exclusive remedy, Buyer may elect to: (i) waive the default and proceed to close this transaction and the Escrow; or (ii) pursue specific performance of this Agreement; or (iii) terminate this Agreement and receive the Earnest Money from the Title Company; provided, however, if specific performance is unavailable because of the affirmative or intentional acts or omissions of the Seller, Buyer may bring suit for damages as a result of the Seller's default hereunder. 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 10.03 below.

10.03 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.

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

## 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, subject only to ad valorem taxes for the year of closing and applicable Permitted Title Exceptions.

(ii) Notice of Reversion Option.

(iii) 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.

(iv) An affidavit of property value as required by law.

(v) Such other documents as are reasonably necessary to close and consummate the purchase and sale transaction contemplated by this Agreement and as may be required by the lender for the Buyer.

(b) At Closing, Buyer shall:

(i) Deliver the Cash Payment to Title Company and any additional funds owed pursuant to Section 13(c) and Section 13(i)(i).

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

(iii) Execute the Notice of Reversion Option.

(iv) Execute and deliver such other documents as are reasonably necessary to close and consummate the purchase and sale transaction contemplated by this Agreement and as may be required by the lender for Buyer or the Title Company.

(c) Title Company shall transfer the Earnest Money and Cash Payment to the Seller by wire transfer.

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

11.02 Taxes. All real property taxes, bonds, special taxes, improvement taxes and assessments pertaining to the Property shall be prorated between the Parties based on the latest information available to Escrow Agent. If the actual amount of said taxes, bonds, and assessments are not known as of the Closing Date, said taxes, bonds and assessments shall be prorated based on the most recently assessed and known amounts, and there shall be no adjustments for either party in the event that the actual amounts of said taxes, bonds and assessments differ from said previous amounts.

11.03 Closing Costs. Escrow fees charged by Title Company shall be paid one-half (1/2) by the Seller and one-half (1/2) by Buyer. Seller shall pay the premium chargeable for a Standard's Owners Policy of Title Insurance. Buyer shall pay (i) the fee to upgrade the Title Policy to an ALTA Extended Coverage policy; (ii) the cost of any title endorsements Buyer may request, and (ii) fees and expenses related to Buyer's financing. The Seller shall pay the fee for recording the Deed. Except as otherwise provided in Section 10.03, 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. Seller has not 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. 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 Buyer 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. Condemnation and Risk of Loss.

12.01 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 Title Company shall forthwith return to Buyer the Earnest Money, less the Fair Consideration, and 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 Close of Escrow as provided in this Agreement.

12.02 Risk of Loss. The risk of loss or damage to the Property and all liability to third persons until the Close of Escrow 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 Close of Escrow except as otherwise provided in Section 13(a).

13. Post-Closing Obligations and Reversion Option. The City and Buyer agree to the following post-closing obligations:

(a) The City shall retain control of all operations of the Airport and shall appoint an Airport Manager in charge of Airport operations. The City shall defend, indemnify, and hold harmless Buyer, its Members Managers, employees, and agents from and against all claims, damages, injuries, costs, penalties, actions, suits, and liabilities of all kinds, including without limitation, reasonable attorneys' fees, for personal injury, illness, or death of any person, and damage to or destruction of property arising out of or related to the negligent acts or omissions, willful misconduct or negligent conduct by the City or the City's employees, contractors or agents in connection with the City's operation of the Airport.

(b) The City shall design and complete rehabilitation of the existing Runway 03-21. Rehabilitation shall include mill and overlay in accordance with proper industry standards and following all local and any additional grant funding received. Buyer shall contribute to the Airport rehabilitation as provided in Section 13(i).

(c) The City has obtained Arizona Department of Transportation (ADOT) Aeronautics Division grants for improvement of the Airport ("Airport Grants"). The Airport Grants include, but are not limited to, \$108,000 for Airport security Fence Improvements Phase I in 2016 and \$180,000 for Airport Security Fence Improvements Phase II in 2018. The City will transfer the Airport Grants to Buyer, to the extent assignable, and Buyer shall be responsible for

the payment of any amounts that ADOT requests to be paid back as a result of Buyer's acquisition of the Property and such amounts shall be paid at Closing.

(d) Within eighteen (18) months after the Close of Escrow, Buyer will begin development and construction of all portions of the Airport Development (defined in Section 8(a)). Buyer shall comply with all local, state and federal laws in connection with the design and construction of the Airport Development.

(e) The City and Buyer shall cooperate with each other in granting reasonable and permanent access easements upon, over and across their respective properties, identified as the City Retained Property and the Property.

(f) The Parties agree to cooperate with each other in granting reasonable and permanent easements for utilities, telecommunications, fiber-optics and other devices upon and over their respective properties. Neither party shall charge the other party for the access and rights granted in such easements. The easements, however, will not interfere with areas where any permanent structural improvements are located or planned to be located on the City Retained Property or the Property, but shall be permitted in areas such as parking lots, landscape areas, drive aisles and other areas not designed for permanent structures.

(g) Buyer shall be responsible for compliance with all local, state and federal regulations in effect at the Airport, as well as compliance with all Federal Aviation Administration laws, regulations, inspections, audits, etc.

(h) Buyer shall be responsible for any costs and fees including, but not limited to, impact fees, plan review fees and permit fees and shall be subject to the City's or other appropriate governmental entity's normal plan submittal, review and approval processes, fees and day-to-day inspection services.

(i) Buyer and its successors shall pay to the City three and one-half percent (3.5%) of the net proceeds received by Buyer and its successors from the sale of sections of the Property to third parties until the City has been paid a total of Two Hundred Fifty Thousand Dollars (\$250,000.00) ("Post-Closing Net Proceeds Payments"). The calculation of net proceeds will allow for the deduction of apportioned land costs, apportioned development costs, construction costs specific to the subject parcel, and other reasonable related expenses incurred by Buyer and its successors for the subject parcel of real estate. There shall be no deduction for management or administrative expenses. Once the total amount set above in this subsection has been paid by Buyer and its successors to the City, Buyer and its successors shall have no further payment obligation to the City pursuant to this subsection.

(j) Post-Closing Net Proceeds Payments from Buyer to the City will be due within thirty (30) calendar days of each closing sale transaction undertaken by Buyer and its successors.

(k) The payments required by this Subsection shall continue to be applicable to each sub parcel until a final certificate of occupancy has been granted by the City for any

subdivided part of the project Property. As such, each time a subdivided parcel is sold, but the subdivided parcel is not finally completed as contemplated and planned, the payment requirement shall continue to be applicable to succeeding sales involving the subdivided parcel.

(l) Buyer and its successors shall provide the City with a detailed accounting for each such transaction at the time of the tendering of the required payment by Buyer to the City. If the City requests additional accounting information, Buyer shall reasonably comply with such requests.

m. Failure of Buyer to satisfy each of the terms and conditions set forth in this Section 13, unless the Parties mutually agree in writing to an extension of time, shall result in the City having the option of taking back the title to any undeveloped Property (“Reversion Option”). A Notice of Reversion Option, in the form attached as Exhibit D, shall be recorded against the Property at Close of Escrow. In the event the City exercises its Reversion Option, the Buyer agrees to immediately sign any and all documents necessary to provide the City with clear and unencumbered title to the subject undeveloped Property. “Undeveloped Property” shall be defined as any of the subject real estate transferred pursuant to this Agreement for which Buyer has not submitted development and construction plans to the City and which construction thereof has not begun to be undertaken by Buyer or its successors in interest in accordance with Section 13(d). If the Property is transferred back to the City for any reason, the City shall pay Buyer the purchase price paid for the Property less the City’s costs incurred in connection with the sale and rezoning of the Property. Prior to exercising the Reversion Option, the City will give Buyer sixty (60) days written notice to comply with the terms it is in breach of.

n. The provisions of this Section 13 shall survive the Close of Escrow.

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 facsimile transmission (facsimile transmission must include verification of transmission) or one (1) business day after being deposited with any commercial air courier or express service providing next day delivery, addressed as follows:

To the Seller: City of Douglas  
Attn: Ana Urquijo, City Manager  
425 E. 10th Street  
Douglas, AZ 85607  
Email: [ana.urquijo@douglasaz.gov](mailto: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](mailto:denis@fitzgibbonslaw.com)

To Buyer: James Whitman  
JW Resources, LLC  
2824 North Power Road, Ste. 113-140  
Mesa, AZ85215  
480-993-7009  
jwhitman@jwresourcesllc.com

With a copy to: Arly Richau  
Attorney at Law  
12401 North 68<sup>th</sup> Place  
Scottsdale, AZ 85254  
602-418-7876  
[arlyrichau@aol.com](mailto:arlyrichau@aol.com)

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

Buyer, the Seller or Escrow Agent 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 or e-mail addresses provided in this Agreement are for aiding informal communications only, and notices shall not be effective if provided orally or if sent only by e-mail.

14.02 Time of the Essence; Date of Performance. Time is of the essence of this Agreement, and Buyer and the 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 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, including supplemental escrow instructions, 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 by facsimile or electronically scanned 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. Title Company, as the party responsible for Closing the transaction contemplated hereby within the meaning of Section 6045(e) of the Code, shall file 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. Title Company further agrees to indemnify and hold Buyer and Seller, and their respective attorneys and brokers, harmless from and against all claims, costs, liabilities, penalties, or expenses resulting from Title Company's failure to file the Tax Reports which Title Company is required to file pursuant to this paragraph.

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.

15. Right to Subdivide and Sell. Buyer shall have the right to sell all or any part of the Property governed by this Agreement, subject to the payments and other requirements contained in Section 13, which payments will continue to be applicable to each sale until final occupancy of such parcel.

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: \_\_\_\_\_  
Its Ana Urquijo, City Manager

Attest:

Approved as to form:

By: \_\_\_\_\_  
Alma Andrade,  
City Clerk

By: \_\_\_\_\_  
Denis M. Fitzgibbons  
City Attorney

BUYER:

JW Resources, LLC an Arizona limited liability company

By: \_\_\_\_\_  
James Whitman, Manager

ACKNOWLEDGEMENT AND AGREEMENT BY TITLE COMPANY

The Title Company hereby acknowledges receipt of a fully executed copy of this Agreement on this \_\_\_ day of \_\_\_\_\_, and agrees to accept, hold, deliver and disburse the Earnest Money, together with all interest accrued thereon and received by the Title Company, strictly in accordance with the terms and provisions of this Agreement and without the necessity of further consent or instruction by Seller or Buyer. The Title Company is hereby designated as, and agrees to undertake the obligations of, the Reporting Person pursuant to Section 6045 of the Internal Revenue Code and the regulations promulgated thereunder.

By: \_\_\_\_\_  
Pioneer Title Agency,  
Attn: Candy Romo  
1065 F Ave Suite #6  
Douglas, Arizona 85607

**EXHIBIT A**

Legal Description of the Property

**To be provided by Title Company**

**EXHIBIT B**

**City Retained Property**

**To be Provided Once Survey is Completed**

**EXHIBIT C**  
**Buyer's Proposal**

The City of Douglas  
 Bid Tabulation

DATE: 8/9/2022  
 TIME:

Proposal: 1FB-2021-A-01

ATTENDEES: Paul Kees REPRESENT: City of Douglas ATTENDEES: REPRESENT: ATTENDEES: REPRESENT:  
Anna Arnold City of Douglas  
Annun Bernabe City of Douglas  
Alexander Medina City of Douglas

Company Name	Option 1	Option 2			Additional Comments
Jim Whitman JW Resources LLC	Option 1 \$2,091,000 Cash offer	Option 2 \$2,251,000 Cash offer			

\*\*PLEASE NOTE THIS IS ONLY A WORKSHEET IT DOES NOT REFLECT THE ACTUAL BID AWARD\*\*



The City of Douglas

Bid Tabulation

Proposal: 1EB-2021-A-001

DATE: 08/08/2022

TIME:

ATTENDEES: \_\_\_\_\_ REPRESENT: \_\_\_\_\_ ATTENDEES: \_\_\_\_\_ REPRESENT: \_\_\_\_\_  
*Cynthia K. Robles* Cary of Douglas  
*Karen Lewis* Cary of Douglas  
 Alejandro Martinez City of Douglas

Company Name	Option 1	Option 2			Additional Comments
<i>Jim Whitman</i>	<i>Option 1</i> \$2,096,000	<i>Option 2</i> \$2,251,000			

PLEASE NOTE THIS IS ONLY A WORKSHEET IT DOES NOT REFLECT THE ACTUAL BID AWARD





3113 E Lincoln Dr, Suite 101 | Phoenix, AZ 85016

CBCWORLDWIDE.COM

RE: Douglas Municipal Airport  
Rene Rios/procurement specialist  
City of Douglas 425 10<sup>th</sup> St. Douglas AZ 85607

Amendment to LOI dated July 19<sup>th</sup>, 2022

Purchase price to be: \$ 2,251,000

Other:

PURCHASE PRICE:

OPTION 1 \$ 2,096,000

TWO million NINETY SIX THOUSAND DOLLARS

OPTION 2 \$ 2,251,000

TWO million TWO HUNDRED FIFTY ONE THOUSAND DOLLARS

Regards,  
Catherine Fox, Broker Associate  
Leo Liakatas, Designated Broker  
Coldwell Banker Commercial Realty

Agreed and Accepted  
This \_\_\_\_\_ day of \_\_\_\_\_, 2022

Purchaser:

By: *James Whitman*

Name: JW Resources LLC

Title: Owner

Seller:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

3113 E Lincoln Dr, Suite 101 | Phoenix, AZ 85016

CBCWORLDWIDE.COM

July 19<sup>th</sup>, 2022

Rene Rios  
Procurement Specialist  
City of Douglas  
425 10th Street  
Douglas, AZ 85607

**RE: Letter of Intent to Purchase – Douglas Municipal Airport**

On behalf of the Purchaser, we are pleased to present you this Letter of Intent to purchase of real property referred to as the Douglas Municipal Airport located at 3200 E. 10th Street in Douglas, AZ 85607.

1. **Purchaser:** James Whitman of JW Resources, LLC, or assignee/nominee
  2. **Seller:** The City of Douglas, or Owner of record
  2. **Description of Property:** The property is comprised of approximately 642.6 acres of semi-improved, improved, and unimproved land as part of the Douglas Municipal Airport located at 3200 E. 10th Street, Douglas, AZ 85607. Approximately 45 acres of land on the northwest corner of the parcel that encompass Airport Park, parking lot, Airport Museum and vacant land shall not be included in the sale. The Property is located in Cochise County and is referred to as a portion of Assessor's Parcel Numbers 410-01-005. However, the 45 acres described above shall be parceled out and separated from parcel number 410-01-005.
  3. **Purchase Price:** The Purchase Price shall be:
    - Option 1: **One Million Eight Hundred Ninety Six Thousand (\$1,896,000)** for the entire property excluding the +/- 40 acres consisting of the airport runway, taxiway, historical hangar, aircraft parking apron and aircraft fuelling facilities.
    - Option 2: **Two Million Fifty One Thousand Dollars (\$2,051,000)** for the entire airport property including the +/- 40 acres consisting of the airport runway, taxiway, and aircraft parking apron, but excluding +/- 5 acres of the historical hangar location.
- Should the City of Douglas elect Option 1 and retain ownership of the physical airport proper, the Purchaser would agree to execute an airport management agreement with the City of Douglas to manage the airport by placing a competent, experienced manager in this position.
4. **Earnest Money:** An earnest money deposit of **Fifty Thousand Dollars (\$50,000)** shall be deposited by Purchaser with a mutually agreed upon title company within three (3) business days after the full execution of the Purchase Agreement.
  5. **Due Diligence Contingency:** For ninety (90) days following the full execution of a Purchase Agreement (the Due Diligence Period), the Purchaser shall exercise due diligence in its review of all physical & financial elements of the Property, including but not limited to, environmental studies, soil tests and feasibility study. If Purchaser is dissatisfied for any reason with the due diligence inspection, the earnest money deposit will be refunded upon written notice to Seller.
  6. **Development Approval and Zoning Contingency:** For one hundred and eighty days (180) following the full execution of a Purchase Agreement, the Purchaser shall seek and obtain City approval and zoning for a master planned development to include, but not limited to, the following:

Dedicated Industrial Area: a portion of the vacant land consisting of all or a combination of warehouse, manufacturing, cold-storage, storage, and outside-storage  
Dedicated Residential Area: a portion of the vacant land consisting of all or a combination of single-family housing, multifamily, and hangar homes.

Dedicated Hangar Area: a portion of the vacant land and property consisting of all or a combination of freestanding or multi-hangar buildings/structures.

Dedicated Commercial and Retail Area: a portion of the vacant land consisting of all or a combination of retail and commercial properties.

All construction would conform to height restrictions associated with aircraft traffic. If Purchaser is dissatisfied for any reason during the Development Approval and Zoning Contingency period, the earnest money deposit will be refunded upon written notice to Seller.

7. **Documentation:** Seller will provide any information in Seller's possession necessary for Purchaser's Due Diligence. The following information, but not limited to, is requested upon commencement of the Due Diligence Period:
  - a. *A current survey showing the boundaries and location of all existing improvements on the Property, as well as easements, utilities, floodplains, if any.*
  - d. *Any building and runway specifications, floor plans and construction/engineering drawings seller may have in its possession.*
  - e. *Copies of current sales tax, property tax bills and any documentation of any property tax exemption or appeal/protest, if applicable.*
  - g. *Any environmental studies (Phase One/Phase Two Reports), soil tests and any remediation done to the subject property that seller may have in its possession.*
  - h. *Summary of any capital improvements made.*
  - i. *A copy of the current leases and any financial statement(s) on the tenants and/or guarantor the seller may have in its possession.*
  - j. *An ongoing disclosure of any delinquency and past due amounts by Tenants.*
  - k. *Copies of all current executed maintenance and service contracts, if any.*
  - l. *Summary of current operating expenses and any capital repairs made.*
  - m. *Itemized list of all grants Seller received and copies of any binding agreements between Seller and ADOT or any other governmental entity/agency.*
8. **Purchase Agreement:** Following execution of a Letter of Intent, the Purchaser shall prepare a Purchase Agreement for Seller's review. Seller and Purchaser along with their legal counsel shall review and negotiate the Purchase Agreement in good faith and in a timely manner toward execution.
9. **Closing of Escrow:** Closing will occur within thirty (30) days after the expiration/waiver of all contingency periods.
10. **Exclusivity:** Upon acceptance of this Letter of Intent, Seller agrees to refrain from negotiating with any other prospective purchaser(s) or entering onto an agreement to sell the property for a period of thirty (30) days.
11. **Agency Disclosure/Brokerage Commission:** Catherine Fox and Leo Liakatas of Coldwell Banker Commercial Realty are solely representing the seller in this transaction. It is agreed by both parties that Coldwell Banker Commercial Realty is to be paid a brokerage agreement from the proceeds of the sale at closing in the amount of three percent (3%) of the gross sales price.

This letter is solely intended as a summary of the basic economic terms and conditions of the proposed agreement, and it is understood and agreed that neither party is under a binding obligation to the other until a purchase agreement acceptable to the Seller and Purchaser has been executed. Notwithstanding the above, only the "Agency Disclosure/Brokerage Fee" and "Exclusivity" sections above shall be binding upon both parties as soon as this letter is executed.

Please let me know if you have any questions or comments regarding any of the items contained herein.

Regards,  
**Catherine Fox**, Broker Associate  
**Leo Liakatas**, Designated Broker  
Coldwell Banker Commercial Realty

Agreed and accepted:  
This 20 day of July, 2022

**Purchaser:**

By: *James Whitman*

Name: JAMES WHITMAN

Title: OWNER  
JW Resources LLC

**Seller:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



**INVITATION FOR BIDS**  
**IFB# 2021-A-01**  
**Sale of Real Property for City of Douglas**  
**Douglas, Arizona**

**INTRODUCTION**

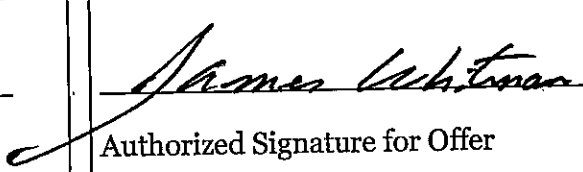
The City of Douglas will accept competitive sealed bids for the purchase and potential development of Real Property referred to as the Douglas Municipal Airport located at 3200 E. 10<sup>th</sup> Street in Douglas, Az 85607, Cochise County, Arizona, at the address or physical location until the date and time detailed below. Bids shall be delivered to the location listed below and shall be in the actual possession of the City on or prior to the exact date and time indicated below. Late bids shall not be considered until the next review date, if any. Bids shall be submitted in a sealed package with "IFB#2021-A-01/Sale of Real Property for the City of Douglas, Douglas, Arizona" and the Offeror's name and address clearly indicated on the front of the package. All bids shall be completed in ink or typewritten. Offerors are strongly encouraged to carefully read the entire Invitation for Bids.

Initial Review Due Date:	September 9, 2021 / Open until sold
Review Time:	Every Thursday after the Initial Review Due Date as needed until sold
Number of Bid Copies	1 original and one (1) copy. (please label original)
Contact:	Rene Rios, Procurement Specialist
E-Mail:	Rene.rios@douglasaz.gov
Mailing Address:	425 10 <sup>th</sup> Street, Douglas, AZ 85607
Bid Submittal Location:	425 10 <sup>th</sup> Street, Douglas, AZ 85607

CITY OF DOUGLAS  
 INVITATION FOR BIDS #2021-A-01

**OFFER**

To the City of Douglas: The undersigned on behalf of the entity, firm, company, partnership, or other legal entity listed below offers on its behalf to the City a bid that contains all terms, conditions, specifications and amendments in the Notice of Invitation for Bids issued by the City. Any exception to the terms contained in the Notice of Invitation for Bids must be specifically indicated in writing and are subject to the approval of the City prior to acceptance. The signature below certifies your understanding and compliance with the Terms and Conditions contained in the Invitation for Bids package issued by the City.

Arizona Transaction (Sales) Privilege  Tax License Number: _____	For clarification of this offer contact: Name: <u>JAMES WHITMAN</u> Email: <u>JWhitman@JWResources</u> <span style="float: right;">LLC.COM</span>
Federal Employer Identification Number: <u>23323318</u>	Telephone: _____ Cell Phone: <u>480-993-7009</u>
<u>JW Resources LLC</u> Company Name	 Authorized Signature for Offer
<u>2824 N. Power RD Suite 113-140</u> <u>MESA AZ 85215</u> Address	<u>JAMES WHITMAN</u> Printed Name

**INSTRUCTIONS TO OFFEROR**

- 1. PREPARATION OF BID:**
- a. Telegraphic (facsimile), email or Mailgram bids will not be considered.
  - b. The offer document shall be submitted with an original ink signature by a person authorized to sign the offer.
  - c. Erasures, interlineations, or other modification in the bid shall be initialed in original ink by the authorized person signing the Offer.
  - d. No bid shall be altered, amended, or withdrawn after the specified bid due date and time.
  - e. Periods of time, stated as a number of days, shall be calendar days.

CITY OF DOUGLAS  
INVITATION FOR BIDS #2021-A-01

- f. It is the responsibility of all Offerors to examine the entire *Invitation for Bids* package and seek clarification of any item or requirement and to check all responses for accuracy before submitting a bid. Negligence in preparing a Bid confers no right of withdrawal after bid due date and time.
  - g. Signatures: All bid responses are required to be signed by an authorized representative of the bidding entity. Bid responses received unsigned will not be accepted.
2. **INQUIRIES:** Any question related to the *Invitation for Bid* shall be directed in writing or via e-mail **no later than five (5) calendar days prior to the review due date**, to the person whose name appears on the front or to the attention of Rene Rios, Procurement Specialist. Questions submitted after that period may not be answered due to time constraints. Any correspondence related to the *Invitation for Bid* should refer to the appropriate *Invitation for Bid ID*, page, and paragraph number. However, the Offeror shall not place the *Invitation for Bid ID* on the outside of any envelope containing questions since such an envelope may be identified as a sealed proposal and may not be opened until after the official *Invitation for Bid* due date and time.
3. **BID FORMAT:** A total of one (1) original and one (1) copy signed and sealed bid bearing IFB#2021-A-01 must be submitted to the Procurement Specialist at the Douglas City Hall, located at 425 10th Street, Douglas, AZ 85607 to be considered as part of the initial or subsequent review.
4. **DUE DATE AND TIME:** Bidders must submit bids to the City's contact as listed on the front until properties are sold at the address or physical location listed on the Introduction/Offer Sheet (Page 1 of IFB) to be considered as part of the initial or subsequent review.
5. **WITHDRAWAL OF BID:** At any time prior to the specified review due date and time, an Offeror (or designated representative) may withdraw the bid. Telegraphic (facsimile) or Mailgram bid withdrawals will not be considered.
6. **AMENDMENT OF BID:** Receipt of an IFB Amendment shall be acknowledged by signing and returning the original document prior to the specified bid due date and time or with the original submittal document.
7. **EVALUATION OF BID:**  
The successful bid will be selected based on the following evaluated elements:
  - (1) proposed price (**possible points \_75\_**);
  - (2) ability to improve and/or develop the Airport property while still retaining Airport operations (**possible points \_25\_**);

After each review due date until the entire Property is sold, a Selection Committee will evaluate each IFB according to these elements. Based on the evaluated elements (worth a maximum of 100 points), scores for each offeror will be evaluated to determine the best offer for the Property. The Selection Committee will develop a rank-ordered list of the submittals to the Procurement Specialist for concurrence.
8. **TAXES:** The City of Douglas is exempt from Federal Excise Tax, including the Federal Transportation Tax. Sales tax, if any, shall be indicated as a separate item.

9. **AWARD OF CONTRACT:** Notwithstanding any other provision of this *Invitation for Bid*, The City expressly reserves the right to:
- a. Waive any immaterial defect or informality; or
  - b. Reject any or all bids, or portions thereof, or
  - c. Reissue an Invitation for Bid

**STANDARD TERMS AND CONDITIONS**

1. **Certification:** By signature in the Offer section of the Offer Award Page, the Offer or certifies that:
- a. The submission of the offer did not involve collusion or other anti-competitive practices.
  - b. The Offeror shall not discriminate against any employee or applicant for employment in violation of the Federal Executive Order 11246.
  - c. The Offeror has not given, offered to give, or intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip favor, or service to a public servant in connection with the submitted offer. Failure to sign the offer, or signing it with a false statement, shall void the submitted offer or any resulting contracts, and the Offeror may be debarred.
2. **Gratuities:** The City may, by written notice to the Offeror, cancel the resultant contract if it is found by the City that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Offeror or any agent or representative of the Offeror, to any officer or employee of the City with a view toward securing an order, securing favorable treatment with respect to the awarding, amending, or the making of any determinations with respect to the performing of such order. In the event the City pursuant to this provision cancels the resultant contract, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of gratuity. Paying the expense of normal business meals, which are generally made available to all eligible city government customers, shall not be prohibited by this paragraph.
3. **Applicable Law:** In the performance of the resultant contract, Purchaser shall abide by and conform to any and all laws of the United States, State of Arizona, and the City of Douglas including but not limited to federal and state executive orders providing for equal opportunities, the Federal Occupational Safety and Health Act and any other federal or state laws applicable to the contract.

The resultant contract shall be governed by the State of Arizona and suit pertaining to the contract may be brought only in courts in the State of Arizona.

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



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ARS §35-393.01; All materials submitted as part of a response to a solicitation are subject to Arizona public records law and will be disclosed if there is an appropriate public records request at the time of or after the award of the contract.

4. **Legal Remedies:** All claims and controversies shall be subject to resolution according to the terms of the City of Douglas Procurement Code.
5. **Contract:** The resultant contract between the City of Douglas and the Offeror shall include the: (1) IFB, including instructions, all terms and conditions, specifications, attachments, and any amendments thereto, and (2) the offer submitted by the Offeror in response to the IFB. In the event of a conflict in language between the City and the Offeror, the provisions and requirements of the resultant contract shall govern. In event of a conflict in language between the IFB and the Contract, the provisions and requirements of the Contract shall govern. However, the City reserves the right to clarify in writing, any contractual terms with the concurrence of the Offeror, and such a written contract shall govern in case of conflict with the applicable requirements stated in the Contract or the Offeror's offer. The IFB shall govern in all other matters not affected by the written contract.
6. **Terms of Sale:** The City will consider all terms of sale including, but not limited to, all cash, deferred payment or other financial arrangements for payment. Bids to purchase that are not all cash must clearly state all of the terms of the sale. The City has NO information on the availability of private financing or on the suitability of this Property for financing.
7. **Bid Ambiguity:** Any ambiguity in the bid as a result of omission, error, lack of clarity or non-compliance by the Offeror with the specifications, instructions, and all conditions of bidding shall be construed in the favor of the City.
8. **Contract Applicability:** The Offeror shall substantially conform to the terms, conditions, specifications, and other requirements found within the text of this specific IFB. All previous agreements, contracts, or other documents, which have been executed between the Offeror and the City, are not applicable to this IFB or any resultant contract.
9. **Relationship to Parties:** It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Offeror is advised that taxes or Social Security payments will not be withheld from any City payments issued hereunder and that the Offeror should make arrangements to directly pay such expenses, if any.
10. **Indemnification:** Purchaser shall defend, indemnify, and hold City, its officers and employees harmless from any and all loss, damage, claim for damage, liability, expense, or cost, including reasonable attorneys' fees, which arise out of, or is in any way connected with the property after closing.
11. **Force Majeure:** Except for payment for sums due, neither party shall be liable to the other not deemed in default under the resultant contract if and to the extent that such party's performance of the contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God: acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; floods; lockouts; injunctions-intervention-acts, or failures or refusals to act by government authority;

and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence. The force majeure shall be deemed to commence when such party is unable to prevent by exercising reasonable diligence.

The force majeure shall be deemed to commence when the party declaring force majeure notifies the other party of the existence of the force majeure and shall be deemed to continue as long as the results or effects of the force majeure prevent the party from resuming performance in accordance with the resultant contract.

Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure. If either party is delayed at any time in the progress of work by force majeure, then the delayed party shall notify the other party in writing of such delay within forty-eight (48) hours commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be hand delivered or mailed *certificate-return receipt* and shall make specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing. The time of completion shall be extended by contract modification for a period of time equal to the time that the results or effects of such delay prevent the delayed party from performing in accordance with the resultant contract.

12. **Liens/Current Agreements:** The City of Douglas Airport Authority, an agency of the City of Douglas, currently has a lease agreement with Air Resources International for real property inside the Douglas Municipal Airport for the purpose of erecting F.B.O./Corporate Type hangars and operate the hangars. This lease may be terminated with or without cause. There is also a land and small hangar lease agreement between the City and Med-Trans Corporation. The land lease is for occupation of a trailer for living quarters for medics and the hanger is for the entire small hangar space. This lease may be terminated by mutual agreement at any time.
13. **Acceptable Bid:** An acceptable bid is one received from a responsible Bidder, whose bid, conforming to this IFB, will be most advantageous to the City.
14. **Bid Executed on Behalf of Bidder:** A bid executed by an attorney or agent on behalf of the Bidder shall be accompanied by an authenticated copy of their Power of Attorney or other evidence of their authority to act on behalf of the Bidder.

If the Bidder is a corporation, the Certificate of Corporate/Organization Bidder, included in this IFB, must be executed. The certificate must be executed under the corporate seal by some duly authorized officer of the corporation other than the officer signing the bid. In lieu of the Certificate of Corporate Bidder, there may be attached to the bid, copies of so much of the records of the corporation as will show the official character and authority of the officer signing, duly certified by the secretary or assistant secretary, under the corporate seal, to be true copies.

If the Bidder is a partnership, and all partners sign the bid, with a notation that they are all general partners, the City will NOT ordinarily require any further proof of the existence of the partnership. If all the partners do NOT sign the bid, then the names of all those except limited partners must be furnished on the bid and the City, in its discretion, may require evidence of the authority of the signer(s) to execute the bid on behalf of the partnership. The name(s) and signature(s) of the designated Bidder(s) must be included on the Bidder Registration and Bid Form.

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If the Bidder is a limited liability company, a certificate of the LLC must be completed and executed by the manager and submitted with the Bidder Registration Form. The Certificate of Corporate / Organization Bidder form may be used for this purpose.

15. **Notice of Acceptance or Rejection:** Notice by the City of acceptance or rejection of the bid shall be deemed to have been sufficiently given when faxed, mailed, or e-mailed to the Bidder or their duly authorized representative at the fax phone number, mailing address, or e-mail address indicated in the bid. The processing of a registration deposit by the City shall NOT, in itself, constitute acceptance of the Bidder's offer. The City reserves the right to reject any or all bids or portions thereof for any reason.
16. **Backup Bidder:** In the event that the preferred bidder is unable to successfully complete the purchase of the Property, the next preferred bidder may be selected.
17. **Cost of Bid/Proposal:** The City shall not reimburse the cost of developing or providing any response to this IFB. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner.

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**SPECIAL TERMS AND CONDITIONS**

**PURPOSE**

The Purpose of these Special Terms and Conditions is to set forth the specific manner in which the sale of the described property shall occur.

**1. Definitions:**

- a. City. The term "City" as used herein refers to the City of Douglas, and is used interchangeably with "Grantor."
- b. Property. The terms "Property" and "Site" as used herein refer to the all or a portion of the property or properties described in the Property Description of this IFB.
- c. Purchaser. The term "Purchaser" as used herein refers to the Bidder whose bid the City accepts and is used interchangeably with "Offeror", "Buyer" and "Grantee."
- d. Bidder(s). The term "Bidder" or "Bidders" as used herein refers to the offeror or offerors for the purchase of the subject Property, and is used interchangeably with "you."
- e. Preferred Bidder. The term "Preferred Bidder" as used herein refers to the Bidder, whose bid conforms to the terms and conditions of the IFB and is determined by the City to be the most acceptable bid.
- f. Back-Up Bidder. The term "Backup Bidder" as used herein refers to the Bidder, whose bid conforms to the terms and conditions of the IFB and is determined by the City to be the most acceptable bid after the Preferred Bidder.
- g. Earnest Money. The term "Earnest Money" as used herein refers to the Bidder's deposit of money demonstrating the Purchaser's good faith offer to the City to fully execute and comply with all terms, conditions, covenants and agreements contained in any contract resulting from the City's acceptance of the Bidder's offered bid price. Once a bid is accepted by the City for contract, all prior deposits made by the Purchaser to register for the sale, subject to this Invitation for Bids, become Earnest Money to the benefit, custody, accountability and control of the City.

**2. Description Provided in IFB**

The description of the Property, and all other information provided with respect to the Property set forth in the IFB, are based on the best information available to City and are believed to be correct. Any error or omission, including but NOT limited to, the omission of any information available to the City having custody over the Property, shall NOT constitute grounds or reason for nonperformance of the contract of sale, or claim by Purchaser for allowance, refund or deduction from the purchase price.

- 3. Condition of Property:** The Property is offered for sale "AS IS" AND "WHERE IS" without representation or warranty, expressed or implied. The Purchaser, and Purchaser's successors and assigns, or any party-in-possession of the Property, or any part thereof, further acknowledges that the City makes NO representations or warranty concerning the title, zoning, character, condition, size, quantity, quality and state of repair of the Property. The City makes NO other agreement or promise to alter, improve, adapt or repair the Property

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NOT otherwise contained herein. Purchaser shall rely solely on its own due diligence and examination of the Property. Purchaser acknowledges that there will be NO claims or any allowances or deductions upon grounds that the Property is NOT in condition or fit to be used for any purpose intended by the Purchaser after the conclusion of the auction. An "As Is, Where Is" provision will be included in the Quitclaim Deed.

4. **Zoning:** The Douglas Municipal Airport is subject to the jurisdiction of the City of Douglas, Arizona and is currently zoned OS (Open Space). However, the verification of the present general plan, zoning, or other development and/or use requirements shall be the responsibility of the Bidder; and the City makes NO representation in regard to these matters. Any inaccuracies or changes in the zoning information shall NOT be cause for adjustment or rescission of any contract resulting from this IFB.
5. **Risk of Loss:** As of the date of conveyance, the Purchaser shall assume all responsibility for care and handling and all risks of loss or damage to the Property, including but NOT limited to all buildings and other improvements located thereon, and assume all obligations and liabilities of ownership and NO claim for any allowance or deduction upon such grounds will be considered after the conclusion of an auction.
6. **Taxes, Assessments and Other Costs:** As of the date of conveyance, the Purchaser shall assume responsibility for all general and special real and personal property taxes or other assessments which have been or may be assessed on the Property, and for all sums due to be paid by the City in lieu of taxes, which amount shall be prorated.
7. **Revocation of Bid and Default:** Purchaser agrees that bids made to purchase the Property are binding offers and once accepted for contract by the City, all deposits made by the Purchaser, subject to this Invitation for Bids, become Earnest Money to the benefit, custody and accountability of the City.

In the event of (a) revocation of a bid prior to acceptance by the City, or (b) in the event of revocation of a bid after notice of acceptance, or (c) in the event of any default by the Purchaser in the performance of the contract of sale created by such acceptance, or (d) in the event of failure by the Purchaser to consummate the transaction, the Purchaser agrees that any Earnest Money and all deposits paid to the City in any acceptable form, together with any payments subsequently made on account, are subject to forfeit by the Purchaser to the City at the option of the City as damages for breach of contract, in which event the Purchaser shall be relieved from further liability.

8. **Liability of City:** If the City accepts a bid for the purchase of the Property and (a) the City fails for any reason to perform its obligations as set forth herein; or (b) title does NOT transfer or vest in the Purchaser for any reason, although Purchaser is ready, willing, and able to close; or (c) any other contractual claim or cause of action hereafter accrues in favor of Purchaser under the terms of this IFB, City's liability to Purchaser shall be strictly limited to all amounts of money Purchaser has paid to City in connection with this sale without interest whereupon City shall have NO further liability to Purchaser.
9. **Title Evidence:** Any Bidder, at its sole cost and expense, may procure any title evidence that the said Bidder desires. The City will, however, cooperate with the Purchaser or their authorized agent in this transaction, and will permit examination and inspection of such deeds, abstracts, affidavits of title, judgments in condemnation proceedings, or other documents relating to the title of the premises and Property involved, as it may have available.

**It is understood and agreed that the City is NOT obligated to pay for any expense incurred in connection with title matters or survey of the Property**

- 10. Title:** If a bid for the purchase of the Property is accepted, a Quitclaim Deed or a deed without warranty in conformity with local law and practice will convey the City's interest. The City does NOT pay for or provide title insurance.
- 11. Notice of Reversion Option.** In the event the Purchaser or subsequent owners of the Property fail to operate the Douglas Municipal Airport as an airport for sixty (60) days during a calendar year without the express written consent of City, the City reserves the right to retake possession of all parcels originally containing the Airport. In the event that the City exercises such option, the Purchaser shall cooperate in transferring ownership of the property back to the City. A Notice of Reversion Option, shall be recorded against the Property upon Close of Escrow.
- 12. Easements, Encroachments and Reservations:** The Property will be sold subject to any and all leases, covenants, reservations, easements, restrictions, encroachments, and rights, recorded or unrecorded, in favor of third parties, for highways, streets, power lines, telephone lines and equipment, pipelines, drainage, sewer and water mains and lines, public utilities, public roads, railroads and other rights-of-way, and any easements, reservations, rights and covenants reserved by the Grantor herein. Successful Bidder(s) shall honor existing easements, if any, for access and utility services.
- 13. Covenant against Contingent Fees:** The Purchaser warrants that he or she has NOT employed or retained any person or agency to solicit or secure this contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the City the right to annul the contract without liability or in its discretion to recover from the Purchaser the amount of such commission, percentage, brokerage, or contingent fee in addition to the consideration herewith set forth. This warranty shall NOT apply to commissions payable by the Purchaser upon the contract secured or made through bona fide established commercial agencies maintained by the Purchaser for the purpose of doing business. "Bona fide established commercial agencies" has been construed to include licensed real estate brokers engaged in the business generally.
- 14. Continuing Offers:** Each bid received shall be deemed to be a continuing offer for ninety (90) calendar days after the close of the Bid Due Date until the bid is accepted or rejected by the City. If the City desires to accept any bid after the expiration of the ninety (90) calendar days, the consent of the Bidder shall be obtained prior to such acceptance.
- 15. Tender of Payment and Delivery of Instrument of Conveyance:** Prior to closing, the Purchaser or Purchaser's agent must open an escrow account with an independent, unaffiliated escrow company ("Escrow Holder") to handle the closing. All closing costs, including escrow fees and document handling expenses, shall be borne solely by the Purchaser. As part of the closing, the City will provide escrow instructions to the Escrow Holder regarding the recording, disposition of proceeds and related matters.

The closing date of the sale is sixty (60) calendar days after the later of the City taking title to the Property or acceptance of the bid. Upon agreement by the City, the Purchaser may close the transaction prior to the sixty (60) calendar-day period.

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On the closing date, the Purchaser shall tender to the Purchaser's Escrow Holder the balance of the purchase price in the form of a cashier's check, certified check or electronic wire transfer. Upon confirmation that Purchaser's wire transferred funds have been received by the City or that Purchaser's funds by check have been confirmed to the satisfaction of the City, the City shall deliver to the Purchaser the instrument, or instruments, of conveyance. Possession of the Property will be assumed by the Purchaser at the time of closing. The City reserves the right to extend the closing date for a reasonable amount of time.

- 16. Delayed Closing:** Any change to the established closing date is subject to the written approval by the City. The City reserves the right to refuse a request for extension of closing. However, if the City grants an extension, the Purchaser may be required to pay either: (a) a liquidated damages assessment of \$200.00 per day; or (b) interest on the outstanding balance of the purchase price, whichever is greater, if the closing of the sale is delayed, and the delay is caused, directly or indirectly, by the Purchaser's action or inaction and NOT by any action on the part of the City. The interest rate shall be computed based on the yield of 10-year United States Treasury maturities as reported by the Federal Reserve Board in "Federal Reserve Statistical Release H.15" plus 1-1/2% rounded to the nearest 1/8% as of the date of bid acceptance. The City may impose additional terms and conditions to grant an extension.
- 17. Closing Costs:** All closing costs, including escrow and financing fees, shall be borne solely by the Purchaser. The Purchaser shall pay all taxes and fees imposed on this transaction and shall obtain at Purchaser's own expense and affix to all instruments of conveyance and security documents such revenue and documentary stamps as may be required by Federal, state and local law. All instruments of conveyance and security documents shall be placed on record in the manner prescribed by local recording statutes at the Purchaser's expense.
- 18. Authority:** This solicitation as well as any resultant contract is issued under the authority of the City. No alteration of any resultant contract may be made without the express written approval of the City in the form of an official contract amendment. Any attempt to alter any contract without such approval is a violation of the contract. Any such action is subject to the legal and contractual remedies available to the City inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the bidder.
- 19. Offer Acceptance Period:** In order to allow for an adequate evaluation, the City requires an offer in response to this solicitation to be valid and irrevocable for ninety (90) days after the opening time and date.
- 20. Term of Contract:** The term of any resultant contract shall commence on the contract award by the City. The contract will be for a period necessary to complete the sale of the Property.
- 21. Bid Format:** *A total of one (1) original bid shall be submitted in the format indicated in the Bid Format and Requirements section of the IFB.*
- 22. Bid Opening:** Bids shall be opened at the time and place designated on the cover page of this document. The name of each Offeror and the identity of the Invitation for Bids for which the bid was submitted shall be publicly read and recorded in the presence of a witness. Prices shall be read publicly.
- 23. Evaluation and Award:** The City of Douglas shall evaluate the bids to determine the most advantageous bid submitted in a responsive manner from a responsible Offeror.

- a. **Disqualification:** An Offeror (including each of its principals) who is currently debarred, suspended or otherwise lawfully prohibited from any public procurement activity may have its bid rejected.
- b. **Clarifications:** The City reserves the right to obtain Offeror clarifications where necessary to arrive at full and complete understanding of the Offeror's product, service and/or solicitation response. Clarification means a communication with an Offeror for the sole purpose of eliminating ambiguities in the Bid and does not give the Offeror an opportunity to revise or modify its bid.

**24. Confidential Information:**

- a. If a person believes that a bid, proposal, offer, specification, or protest contains information that should be withheld, a statement advising the City Manager of this fact shall accompany the submission and the information shall be identified.
- b. The information identified by the person as confidential shall not be disclosed until the City Manager makes a written determination.

**25. Confidentiality of Records:** The Purchaser shall establish and maintain procedures and control that are acceptable to the City for the purpose of assuring that information contained in its records or obtained from the City remains confidential pursuant to applicable requirements.

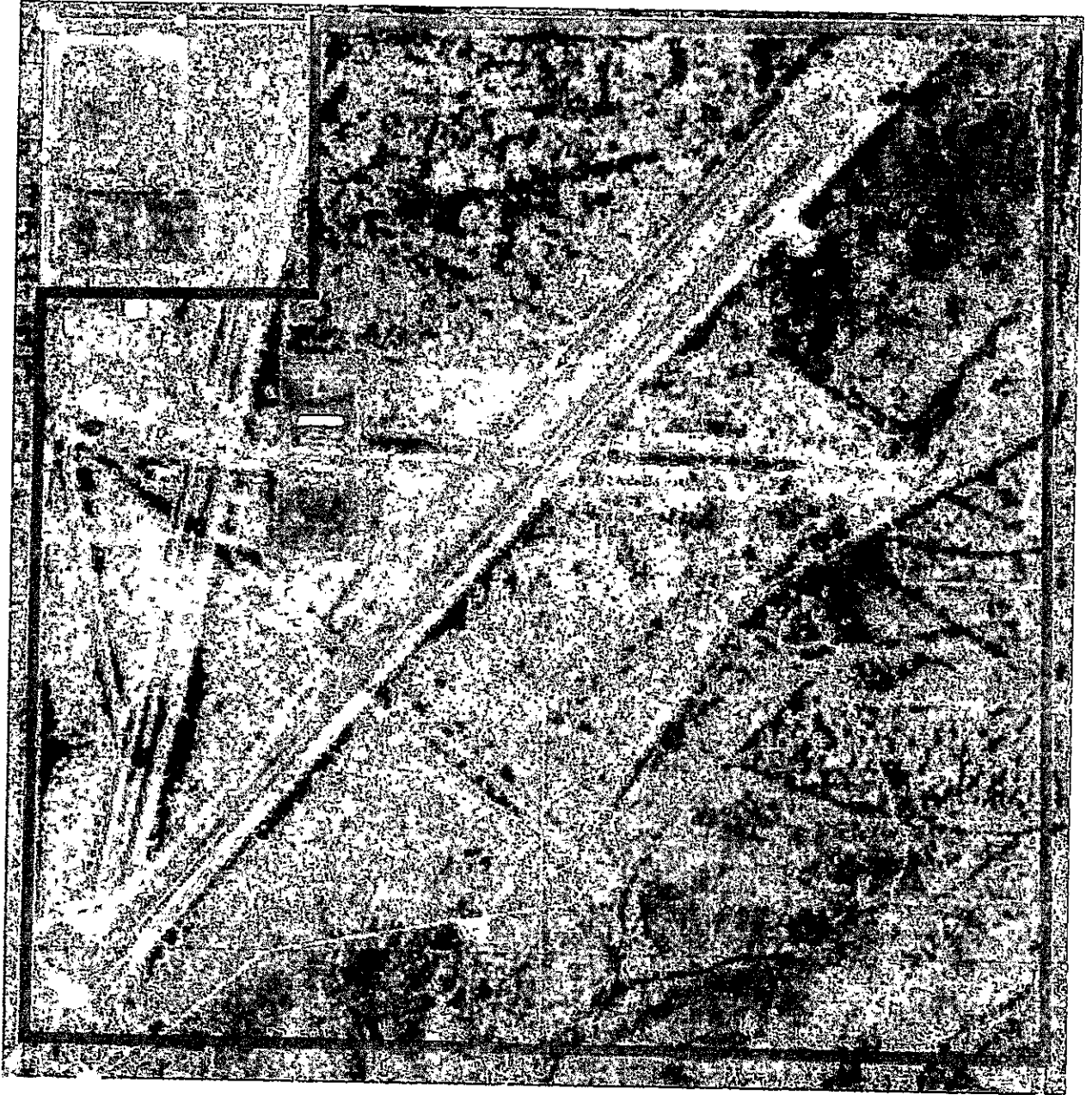
**26. Resultant Contract:** A contract shall be issued between the City and the successful Bidder following award.

**27. Cancellation:** The City reserves the right to cancel the whole or any part of any resultant contract due to failure by the Bidder to carry out any obligation, term or condition of any resultant contract. Upon receipt of the written notice of concern, the contractor shall have ten (10) days to provide a satisfactory response to the City. Failure on the part of the Bidder to adequately address all issues of concern may result in the City resorting to any single or combination of the following remedies.

- a. Cancel any contract;
- b. Reserve all rights or claims to damage for breach of any covenants of the contract.



**EXHIBIT A  
PROPERTY MAP**



# ARTICLES OF ORGANIZATION

## OF LIMITED LIABILITY COMPANY

### ENTITY INFORMATION

**ENTITY NAME:** JW RESOURCES LLC  
**ENTITY ID:** 23323318  
**ENTITY TYPE:** Domestic LLC  
**EFFECTIVE DATE:** 01/21/2022  
**CHARACTER OF BUSINESS:** Any legal purpose  
**MANAGEMENT STRUCTURE:** Manager-Managed  
**PERIOD OF DURATION:** Perpetual  
**PROFESSIONAL SERVICES:** N/A

### STATUTORY AGENT INFORMATION

**STATUTORY AGENT NAME:** Denton Peterson Dunn, PLLC  
**PHYSICAL ADDRESS:** 1930 N. ARBOLEDA, Suite 200, MESA, AZ 85213  
**MAILING ADDRESS:** 1930 N. ARBOLEDA, Suite 200, MESA, AZ 85213

### PRINCIPAL ADDRESS

2824 N. Power Road, Suite 113-140, MESA, AZ 85215

### PRINCIPALS

Manager: James Whitman - 2824 N. Power Road, Suite 113-140, MESA, AZ, 85215, USA -  
jwhitman@djresourcesllp.com - Date of Taking Office:

### ORGANIZERS

Denton Peterson Dunn PLLC

### SIGNATURES

Authorized Agent: Anjelica Marie Peralta - 01/21/2022

**EXHIBIT D**

**Notice of Reversion Option**

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

---

### NOTICE OF REVERSION OPTION

THIS NOTICE OF REVERSION OPTION (“Notice”) gives notice that as of this \_\_\_\_\_ day of \_\_\_\_\_, 2023, the City of Douglas, an Arizona municipal corporation (“City”), has a reversion option on certain real property located at Douglas Municipal Airport 3200 E. Airport Dr., Douglas, Cochise County, State of Arizona, as more specifically described in Exhibit “A” attached hereto (“Property”).

1. On \_\_\_\_\_, 2023, the City and JW Resources, LLC, an Arizona limited liability company (“Buyer”) entered into a Purchase and Sale Agreement and Escrow Instructions containing a Reversion Option for the Property (“Agreement”).

2. The Property was transferred to Buyer pursuant to a Special Warranty Deed recorded on \_\_\_\_\_, 2023 at Fee No. 2023- \_\_\_\_\_ in the Official Records of the Cochise County Recorder.

3. Pursuant to the Agreement, City and Buyer agreed that if Buyer fails to timely complete the requisite obligations, as set forth in Section 13 of the Agreement, the City shall have the option of taking back title to the Property. In the event the City exercises this option as set forth in the Agreement, Buyer agrees to immediately sign any and all documents necessary to provide City with clear and unencumbered title to the Property. If the Property is transferred back to the Seller for any reason, the City shall pay Buyer the purchase price paid for the Property less the City’s costs incurred in connection with the sale and rezoning of the Property.

4. The terms, covenants and provisions of the Agreement, the terms of which are hereby incorporated by reference into this Notice, will run with the Property while in effect and shall extend to and be binding upon the respective heirs, devisees, personal and legal representatives, successor and assigns of City and Buyer.

IN WITNESS WHEREOF, City has executed this Notice of Reversion Option as of the day and year first above written.

[SIGNATURE ON NEXT PAGE]

CITY OF DOUGLAS,  
an Arizona municipal corporation

By: \_\_\_\_\_  
Ana Urquijo, City Manager

STATE OF ARIZONA        )  
                                  ) ss.  
COUNTY OF COCHISE        )

The foregoing was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by Ana Urquijo, the City Manager of the City of Douglas, an Arizona municipal corporation, who acknowledged that he signed the foregoing instrument on behalf of the City.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_