

ORDINANCE NO. 24-1205

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF DOUGLAS, COCHISE COUNTY, ARIZONA, (1) APPROVING THE SALE, EXECUTION AND DELIVERY OF PLEDGED REVENUE OBLIGATIONS, SERIES 2025, EVIDENCING ALL THE INTEREST OF THE OWNER THEREOF IN A PURCHASE AGREEMENT; (2) APPROVING THE FORM, AUTHORIZING THE EXECUTION AND DELIVERY OF NECESSARY AGREEMENTS, INSTRUMENTS AND DOCUMENTS RELATED TO THE SALE, EXECUTION AND DELIVERY OF SUCH OBLIGATIONS; (3) ADOPTING POST-ISSUANCE TAX COMPLIANCE PROCEDURES IN CONNECTION WITH ISSUANCE OF OBLIGATIONS OF THE CITY; (4) DELEGATING AUTHORITY TO THE MAYOR, THE CITY MANAGER, THE DEPUTY CITY MANAGER AND THE FINANCE DIRECTOR TO DETERMINE CERTAIN MATTERS AND TERMS WITH RESPECT TO THE FOREGOING; AND (5) AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS ORDINANCE; ESTABLISHING SEVERABILITY OF COMPONENTS OF ORDINANCE; AND ESTABLISHING AN EFFECTIVE DATE THEREOF.

WHEREAS, City of Douglas Mayor and Council, have determined to finance the costs of an asphalt plant and appurtenances (the "Project"), by entering into a Second Purchase Agreement, to be dated as of the first day of the month of the dated date of the hereinafter described Obligations established as provided herein (the "Purchase Agreement"), with a trustee bank to be selected as provided herein, as trustee (the "Trustee"), in its separate capacity as "Seller"; and

WHEREAS, in connection with the Purchase Agreement, the Mayor and Council have deemed it necessary and desirable to provide for the sale, execution and delivery of pledged revenue obligations, to be designated "Pledged Revenue Obligations, Series 2025" (the "Obligations"), pursuant to a Second Trust Agreement, to be dated as of the first day of the month of the dated date of the Obligations established as provided herein (the "Trust Agreement"), between the Trustee and the city, evidencing all the interests of the owner of the Obligations in payments to be made by the city to the Trustee pursuant to the Purchase Agreement; and

WHEREAS, the payments represented by the Obligations will be secured by amounts received under the Purchase Agreement pursuant to which the city will pledge revenues from the Excise Taxes and the State Shared Revenues (each as defined in the Trust Agreement); and

WHEREAS, pursuant to the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations promulgated thereunder (the "Regulations"), issuers of obligations, the interest on which is intended to be excludable from the gross income of the owners thereof for federal income tax purposes ("Tax-Exempt Obligations"), are required to establish policies and procedures to ensure compliance with the applicable provisions of the Code and the Regulations, and the Mayor and Council have determined that procedures should be adopted in order to ensure that Tax-Exempt Obligations issued by the city comply with the provisions of the Code and the Regulations (the "Procedures"); and

WHEREAS, there have been presented to the Mayor and Council at the meeting at which this Ordinance is being adopted the proposed forms of: (1) the Purchase Agreement; (2) the Trust Agreement; and (3) the Procedures; and

WHEREAS, financing the costs of the Project pursuant to the Purchase Agreement is in furtherance of the purposes of the city and is in the public interest;

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

Section 1. (a) The execution and delivery of the Obligations by the Trustee is approved.

(b) The Mayor, the City Manager, the Deputy City Manager and the Finance Director or the designees of any of them (collectively, the "Authorized Representatives") are authorized to determine on behalf of the city: (1) the aggregate principal amount of the Obligations (but not to exceed \$4,~~000~~500,000); (2) the entity to serve as Trustee;

(3) the entity to which the Obligations will be sold (the "Purchaser"); (4) the date the Obligations are to be sold to the Purchaser; (5) the date the Obligations are to be dated; (6) the dates on which interest on the Obligations is to be payable and the interest rates per annum the Obligations are to bear (but not to exceed, except in case of default or taxability, 8% per annum); (7) the dates the Obligations are to mature (but not later than a final maturity date in 20402045), the principal amounts to mature on such dates and the provisions for redemption thereof in advance of such dates; and (8) the terms upon which the Obligations are to be sold to the Purchaser (including determinations of price, original issue discount and premium).

(c) The Authorized Representatives are further authorized to determine on behalf of the city whether the purchase of an insurance policy securing payment of the Obligations would be advantageous to the city or the terms of the financing represented by the Obligations. The Authorized Representatives are authorized to negotiate with and secure, with proceeds of the Obligations or otherwise, such an insurance policy, from one or more institutions, the claims-paying ability of which are then assigned one of the two highest rating categories by a nationally recognized credit rating agency. The Authorized Representatives are authorized to execute and deliver any instruments or documents necessary in connection with the purchase of any such insurance policy, including those making provision for the repayment of amounts advanced by the institutions issuing such insurance policy.

(d) The form and other terms of the Obligations, including the provisions for the signatures, authentication, payment, registration, transfer, exchange, redemption and number shall be as set forth in the Trust Agreement and are approved.

(e) The Procedures are hereby adopted to establish policies and procedures related to the purposes set forth in the Recitals hereto. The right to use discretion as necessary and appropriate to make exceptions or request additional provisions with respect to the Procedures as may be determined is hereby reserved. The right to change the Procedures from time to time, without notice, is also reserved.

Section 2. The Obligations are to be sold to the Purchaser pursuant to the terms of the Purchase Agreement and the Trust Agreement, as such terms are to be determined as provided hereinabove.

Section 3. The forms, terms and provisions of the Purchase Agreement and the Trust Agreement, in substantially the forms of such documents (including the Obligations and other exhibits thereto) presented at the meeting of the Mayor and Council at which this Ordinance is being adopted are approved, with final provisions, insertions, deletions and changes as determined hereinabove, and shall be approved by the Mayor, any other member of the Council, the execution of each such document being conclusive evidence of such approval. The Mayor, or any other member of the Council and the City Clerk, where applicable, are authorized and directed, for and on behalf of the city, to execute and deliver and attest or approve the Purchase Agreement and the Trust Agreement, in each case as necessary and as applicable, and to take all action to carry out and comply with the terms of such documents.

Section 4. The Trustee (including in its separate capacity as Seller) is requested to take any and all action necessary in connection with the execution and delivery of the Purchase Agreement and the Trust Agreement and the sale and execution and delivery of the Obligations and is further authorized and directed to take such action as may be reasonable for the administration of the trust so held by it.

Section 5. The covenants and agreements contained in the Purchase Agreement as to the pledge of and the lien on revenues from the Excise Taxes and the State Shared Revenues and the restriction on the issuance of further parity obligations secured by revenues from the Excise Taxes and the State Shared Revenues are approved and confirmed.

Section 6. On behalf of the city the authorized representatives and other city officers, are authorized and directed, without further order of the Mayor and Council, to do all such acts and to execute and deliver all such certificates, proceedings, agreements and other documents as may be necessary or convenient to be executed and delivered (including entering into any agreements for administrative or procedural requirements requested by the Purchaser) to evidence compliance with, or further the purposes of, all the terms and conditions of this Ordinance and the consummation of the transactions contemplated hereby and as may be necessary to carry out the terms and intent of this Ordinance.

Section 7. All actions of the officers and agents of the city which conform to the purposes and intent of this Ordinance and which further the sale, execution and delivery of the Obligations as contemplated by this Ordinance, whether heretofore or hereafter taken, are ratified, confirmed and approved.

1 **Section 8.** After any of the Obligations are delivered by the Trustee to the Purchaser and upon receipt of payment
2 therefore, this Ordinance shall be and remain irrevocable until the Obligations and the interest and premium, if any,
3 thereon shall have been fully paid, cancelled and discharged.

4 **Section 9. Severability.** If any chapter section, paragraph, clause or phrase of this Ordinance shall for any reason
5 be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or phrase
6 shall not affect any of the remaining provisions of this Ordinance. All orders, resolutions and ordinances or parts
7 thereof inconsistent herewith are hereby waived to the extent only of such inconsistency. This waiver shall not be
8 construed as reviving any order, resolution or ordinance or any part thereof.

9 **Section 10. Effective date:** The provisions in this Ordinance shall be effective thirty (30) days after final approval
10 and adoption by the Mayor and Council.

11 **PASSED AND ADOPTED** by the Mayor and Council of the City of Douglas, Arizona, this 8th day of January 2025.

12 _____
13 Jose Grijalva, Mayor

14 Attest:

15 Approved as to form:

16 _____
17 Alma Andrade, City Clerk

18 _____
19 Denis Fitzgibbons, City Attorney

20 Prepared by:
21 Luis Pedroza, Deputy City Manager