

LICENSE AND ACCESS AGREEMENT FOR EROSION CONTROL DEVICE

This Agreement is made and entered into by and between COCHISE COUNTY FLOOD CONTROL DISTRICT, a political subdivision of the State of Arizona, hereinafter referred to as “COUNTY”, and THE SAN JOSE RANCH, INC., a corporation organized under the laws of the State of Arizona, hereinafter referred to as the “RANCH”.

RECITALS:

1. The Hereford Natural Resource Conservation District (the “District”) is the recipient of a \$993,880 grant from the Arizona Department of Environmental Quality (“ADEQ”) which, together with third party funding, will be used to construct a erosion control device (“ECD”) on Horseshoe Draw for flood and erosion control to reduce sediment and E. coli transport to the San Pedro River in Cochise County, Arizona. The final design of the ECD is attached hereto as Exhibit A (the “Design”).
2. The ECD will be built and operated on private property owned by the RANCH. Said property consists of approximately forty-one (41) acres, as depicted on the map attached hereto as Exhibit B hereto. The legal description of the property is set forth an Exhibit C (hereinafter the “Property”).
3. In addition to flood erosion control to reduce sediment and E. coli transport to the San Pedro River, based on engineering estimates the parties expect annual incidental potential recharge to the aquifer from the ECD between 36-40 acre feet/year.
4. In addition to the aforementioned benefits, the parties expect that the ECD will reduce the adverse effects of periodic flooding on S. Paloma Trail Road.
5. The parties and the District believe that the COUNTY has more resources to devote to operating and maintaining the ECD and, for that reason, the DISTRICT wishes to convey the ECD to the COUNTY upon completion and acceptance of construction of the ECD. Concurrent with execution of this Agreement, the COUNTY and DISTRICT will execute an Agreement to Convey the ECD from the DISTRICT to the COUNTY.
6. The COUNTY has authority to acquire, operate and maintain the ECD pursuant to A.R.S. 48-3603.
7. Because of the beneficial effects of the ECD, the RANCH is willing to allow the District to construct the ECD on the Property and for the COUNTY to operate and maintain it, and to provide access to the COUNTY to enable it to do so.

8. The Property is subject to a Deed of Conservation Easement, dated July 28, 2000, recorded as Fee #000821401, in favor of the United States of America through its Bureau of Land Management (the "Conservation Easement").

9. The purpose of this Agreement is to set forth the terms on which the COUNTY agrees to own, operate and maintain the ECD and on which the RANCH agrees to allow the COUNTY to do so.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, COUNTY and RANCH make the following agreements:

AGREEMENT:

1. During construction of the ECD, the COUNTY shall have the right to inspect the ECD. The RANCH hereby grants the COUNTY a right of access to the ECD in order to conduct such inspections as the COUNTY deems reasonable or necessary. Access shall be via the route depicted on Exhibit D hereto, and legally described on Exhibit E hereto, which route shall hereinafter be referred to as the "Access Route".
2. The RANCH grants the COUNTY a license to operate, maintain, and access the ECD and a license to use the Property for such purpose; provided, however, that the parties acknowledge and agree that the grant of the license is predicated upon the COUNTY accepting the ECD from the District upon completion of its construction, which acceptance is dependent on the COUNTY's determination in its discretion that ECD has been constructed in conformance with the Design and has no deficiencies; and in that event, the District will execute a bill of sale to the COUNTY for the ECD as documentation of transfer of title of the ECD.
 - a. The licenses will be effective as of the execution and acceptance of the bill of sale.
 - b. The licenses shall remain in effect as long as the ECD remains operable and is maintained by the COUNTY.
 - c. Access to the ECD and the Property shall be via the Access Route.
3. The parties acknowledge that during the course of operating and maintaining the ECD, it is likely that the COUNTY will need to remove sediment from the basin. To minimize the cost of doing so, the RANCH grants the COUNTY a further license to dispose of any such sediment on RANCH property near the ECD and the Property.
4. The licenses granted by the RANCH pursuant to this Agreement shall be nonexclusive in the sense that RANCH personnel, and cattle, may enter onto the Property for ranching purposes in the area of the Property not including the ECD structure itself; provided, however, that the RANCH shall enter upon the ECD structure itself only so long as the

COUNTY determines that such entry in no way compromises the structural integrity and does not add to the cost to maintain the ECD. The RANCH shall not take any action with respect to the structure, and shall take precautions to prevent cattle from entering upon the ECD structure. The only persons who shall take any action with respect to the structure are COUNTY personnel and agents. In all other respects, the licenses granted by the RANCH shall be exclusive, meaning no other persons or property shall be allowed on the Property. Furthermore, with respect to the Access Route, the RANCH shall place a locked gate at a mutually agreed upon point on the route, with keys or combination available only to the RANCH and the COUNTY, it being understood and agreed that only RANCH and COUNTY personnel and their agents shall have access beyond this point.

5. The COUNTY will maintain the Access Route as needed for its access to the ECD. The RANCH may maintain the Access Route as needed for its ranching operations so long as such maintenance does not adversely impact the COUNTY's ability to access the ECD.
6. The COUNTY makes no warranty, express or implied, as to the effectiveness of the ECD for the purposes for which it is intended, or its structural integrity.
7. Nothing in this Agreement shall be construed as implying that the COUNTY has any ongoing obligation to the RANCH or anyone else to operate or maintain the ECD in any particular manner other than as prescribed in the Operation and Maintenance Manual attached hereto as Exhibit D. COUNTY shall have no obligation to reconstruct the ECD in case of loss, damage or inoperability.
8. The COUNTY shall have no obligation to remove the ECD, even if it becomes inoperable or defective.
9. The RANCH waives any claim for liability against the COUNTY for any loss that might occur from operation or maintenance of the ECD, or failure to properly operate and maintain the ECD.
10. The RANCH warrants that installation, operation and maintenance of the ECD does not violate the Conservation Easement. The RANCH bears full responsibility for any claim by the holder of the Conservation Easement that installation, operation and maintenance of the ECD violates the Conservation Easement, and will indemnify, defend and hold harmless the COUNTY for any such claim.
11. The RANCH warrants that installation, operation and maintenance of the ECD does not violate any deed of trust, mortgage, lien or other encumbrance on the Property. The RANCH bears full responsibility for any claim by the holder or beneficiary of any such deed of trust, mortgage, lien or other encumbrance that installation, operation and maintenance of the ECD violates any rights thereunder, and will indemnify, defend and hold harmless the COUNTY for any such claim.

12. Except as otherwise stated in Paragraphs 8 and 9, each Party (as Indemnitor) agrees to indemnify, defend and hold harmless the other Party (as Indemnitee) from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.
13. COUNTY may not assign its interest in this Agreement to any party without the written consent of the RANCH.
14. This Agreement shall be recorded and the licenses, duties and rights set forth in this Agreement shall run with land, and shall be binding on, and inure to the benefit of, all heirs, successors and assigns.
15. The Recitals are hereby incorporated into this Agreement.
16. The parties shall comply with all applicable state and federal statutes and regulations governing Equal Employment Opportunity, Non-Discrimination, and Immigration. Reference: Governor of Arizona Executive Order No. 2005-30, dated 10/28/05.
17. This Agreement is subject to cancellation pursuant to the provisions of Arizona Revised Statutes (A.R.S.) § 38-511 regarding Conflict of Interest.
18. The RANCH agrees to keep all books, accounts, reports, files and other records relating to this Agreement for five (5) years after completion of this contract. In addition, the RANCH agrees that such books, accounts, reports, files and other records shall be subject to audit pursuant to A.R.S. § 35-214.
19. Disclosure of any documents or records are subject to the public records provisions of Arizona law, A.R.S. § 39-121 et. seq.
20. This Agreement shall be governed by Arizona law and jurisdiction shall be in Arizona courts with venue in Cochise County, Arizona.
21. In accordance with A.R.S. § 35-393.01, the RANCH certifies that the RANCH is currently not engaged in, and for the duration of this Agreement agrees not to engage in, a boycott of Israel.
22. RANCH hereby warrants that it will at all times during the term of this Agreement comply with all federal immigration laws applicable to RANCH's employment of its

employees , and with the requirements of A.R.S. § 23-214(A) (together the "State and Federal Immigration Laws"). The RANCH shall further ensure that each sub-consultant who performs any work for the RANCH under this Agreement likewise complies with the State and Federal Immigration Laws .

23. Any notices, questions, comments and concerns regarding the duties and responsibilities of the Parties under this Agreement are to be directed to:

COUNTY:

Cochise County Administrator
1415 Melody Lane, Bldg. G
Bisbee, Arizona 85603

RANCH:

The San Jose Ranch, Inc.
John W. Ladd
PO Box 4012
Bisbee, AZ 85603

*REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOLLOWS*

DISTRICT and COUNTY have executed this Agreement as of the dates set forth below:

COCHISE COUNTY

Richard Searle
Chairman, Board of Supervisors

Date

ATTEST:

Arlethe Rios
Clerk of Board of Supervisors

Date

APPROVED AS TO FORM:

Britt Hanson
Attorney for the County

Date

THE SAN JOSE RANCH, INC.

By: _____

Date

Its: _____

Exhibit A
Design of Erosion Control Device

Exhibit B
Map of the 41 Acre Parcel Licensed Under this Agreement

Exhibit C
Legal Description of the 41 Acre Parcel Licensed Under this Agreement

Exhibit D
Map of the Access Route

Exhibit E
Legal Description of the Access Route