

**LEASE BY ELFRIDA FIRE DISTRICT
OF LAND FOR COMMUNICATION EQUIPMENT
TO COCHISE COUNTY and LICENSE TO ELFRIDA TO PLACE
COMMUNICATION EQUIPMENT ON THE TOWER**

This Agreement is entered into between Elfrida Fire District, a political subdivision of the State of Arizona ("Elfrida"), and Cochise County, a political subdivision of the State of Arizona, whose principal address is 1415 W. Melody Lane, Bisbee, Arizona 85603 ("County").

1. RECITALS:

A. Elfrida owns land located at 10295 N. Central Highway, Elfrida.

B. The legal description of the land in paragraph A is: IN W2 NW BEG AT SW COR OF W2 NWE TO E LINE OF BISBEE ELFRIDA CO RD N ALNG E021NE OF SAID CO RD TO INTRSEC W BNDRY LINE OF ST HWY 666 R/W SELY ALNG W LINE OF HWY 666 03W TO S LINE OF W2 NW W TO E LINE OF BISBEE ELFRIDA CO RD TO E LINE OF BISBEE ELFRIDA CO04D LESS THAT POR DESC AS FOLLOWS BEG AT A PT WHICH IS THE CENTER OF THE SLINE O ABOVE DESC05RACT E20' N25'' W40' S25' E20' TO POB .022AC ALL IN SEC 22 20 26 TOTAL 3.371 AC.

C. Elfrida wishes to lease the above described land (the "Property") to the County for the purpose of installing, operating and maintaining certain communication equipment to include the erection of an antenna tower (the "Tower") and the installation of antennas thereon, and various pieces of radio communication equipment.

D. In consideration for the lease of the Property, the County wishes to grant Elfrida a license to enter the leased land and erect, operate and maintain radio communication equipment and antennas on the Tower.

E. Elfrida desires to sub-license additional space on the Tower for a cell ring for cell phone transmission, with Elfrida to receive the rent, as set forth herein.

F. The parties acknowledge that the lease to the County and the license to Elfrida has been in existence for over a decade, but without formal documentation, and that this Agreement memorializes the parties' understandings of the terms of the existing arrangement.

2. AGREEMENT:

A. Lease of Real Property. Elfrida hereby grants the County a lease of the Property for the limited purpose of erecting, maintaining and operating a radio communication antenna and associated equipment.

B. Consideration for Lease; License to Elfrida. In lieu of rental payment, County grants Elfrida, as consideration for the lease of the Property, a license to enter the Tower and erect, operate and maintain radio communication equipment and antennas on the aforementioned antenna Tower, including the installation of associated equipment on the land.

C. Right to Sub-license Tower. The County grants Elfrida the right to sub-license space on the Tower to commercial entities for the limited purpose of allowing the installation, maintenance and operation of a cell ring for relaying cell phone transmissions, phone antennas and associated equipment. Elfrida shall receive any revenue from such sub-license. The County shall have the right to review and approve such sub-license agreement, which approval shall not be unreasonably withheld. Any such approval must be in writing signed by the County's IT Director or his designee.

D. Tower Inspections. If the Tower is sub-licensed, so that Elfrida is receiving revenue from the sub-license, Elfrida will split the costs with the County for inspecting the Tower. Otherwise, the County will pay the full cost of inspecting the Tower.

3. TERM OF LEASE:

A. Initial Term. The initial term of this lease shall be for five (5) years commencing on the date of full execution of this Agreement.

B. Renewal Term. County shall have the right to extend this Agreement on the same terms contained within for two (2) additional periods of five (5) years each. This Agreement shall automatically be renewed for each successive renewal term unless County notifies Elfrida of County's intention not to renew the Lease at least thirty (30) days prior to the expiration of the then-current term.

C. Disposition of Tower. If the County ceases using the Tower, and wishes to terminate this agreement, Elfrida will have the right to take ownership of the Tower in

order to continue using it for its communications equipment. If Elfrida does not wish to take ownership, the County will be responsible for removing the Tower.

4. FACILITIES; UTILITIES; ACCESS:

A. Title to Lessee Facilities; Removal. Title to Elfrida's and County's respective facilities and equipment shall be held by each party. Each party's facilities shall remain their respective personal property and are not fixtures. Each party has the right, and the obligation, to remove all their respective facilities at its sole expense before expiration or at earlier termination of the Agreement. County shall repair any damage to the property caused by such removal of its facilities. The failure of either party to remove their respective facilities shall constitute an abandonment of such facilities by that party to the other; provided, however, that the abandoning party shall remain obligated to reimburse the other party for the cost of any such removal and/or repair.

B. Utilities. Each party shall timely pay for the electricity it consumes in its operations at the rate charged by the servicing utility company. The County, at its sole cost and expense, shall supply utility service. Any easement necessary for such power or other utilities will be at a location reasonably acceptable to the parties and the servicing utility company.

C. Emergency Generator. The County shall supply a fuel-powered generator at its sole cost and expense. Such installation shall comply with all applicable safety and environmental laws and regulations.

D. Access. Each party has the right to enter the Property for purposes of constructing, installing, operating, maintaining and repairing their respective facilities; provided, however, that Elfrida shall be allowed access to the antenna Tower only with at least twenty-four hours notice to the County except in the case of emergency.

E. Quiet Enjoyment. Elfrida covenants that so long as the County performs the covenants, terms and conditions required of it as contained herein, the County shall peaceably and quietly have, hold and enjoy the right to use the Property for the term and any extensions thereof, and Elfrida shall not act or permit any third person to act in any manner which would interfere with or disrupt the County's use as permitted herein. Elfrida warrants that it has the authority to grant the rights conferred by this Agreement.

F. Liability for Damage Caused by Tower. The County shall be responsible for the Tower and liable for any damage caused should the Tower fall or move.

///

///

5. NON-INTERFERENCE:

A. Interference Study. At County's request, Elfrida shall perform an intermod and interference study at the Property and evaluate its operations for interference with other existing wireless communications users at the Property. Elfrida acknowledges that the disclosed uses and frequencies, as identified on Exhibit A, will not interfere with County's use of the Property, and covenants that Elfrida's uses will not interfere with such disclosed uses and frequencies.

B. Elimination of Interference. Elfrida agrees that it will eliminate in a prompt and timely manner any interference that its facilities or operations cause with the operations of other users at the Property.

C. No Additional Equipment Without Consent. Elfrida agrees not to install additional equipment on the Tower or change the frequency, power or type of its equipment on the antenna Tower without obtaining the written consent of the County, which consent shall not be unreasonably withheld.

6. TERMINATION:

A. Termination for Default. If either party fails to perform any of its obligations hereunder, the other party shall provide written notice to the person indicated in below specifying the failure claimed as a default. If the default is not cured within thirty (30) days after receipt of the notice, or in the case of failures not related to the payment of money, if the defaulting party has not within that time begun action to cure the default and does not thereafter diligently prosecute such action to completion, the other party may terminate this Agreement as applied to the specific portion of this Agreement to which the failure applies or to the Agreement as a whole if the default applies to the entire Agreement, by delivering to the defaulting party written notice of such termination. If the defaulting party in good faith disputes the existence of a default, it shall initiate appropriate action in a court of competent jurisdiction within the 30-day period and the time to cure shall begin on the date that a final determination is made that a default exists. Notwithstanding the foregoing, in no event shall the time within which Lessee may cure a failure in the payment of money exceed a single, ten (10) day period.

B. Destruction of or Damage to the Antenna Tower: If any of the antenna Tower is destroyed or damaged in whole or in part by fire, lightning, windstorm, flood, earthquake, explosion, collapse, aircraft or other casualty, i) the County shall have the right but not the obligation to repair or rebuild the Tower, and ii) the County shall have the right to terminate this Agreement by written notice to Elfrida within sixty (60) days of such destruction or damage.

C. Termination by County. If for any reason the County no longer desires to maintain any equipment on the Tower, and no longer desires to maintain the Tower, it may terminate this Agreement by giving Elfrida at least thirty (30) days written notice. Elfrida shall then have the right to take ownership of the Tower, or to require the County to remove the Tower.

7. INSURANCE:

Each party shall carry during the term of this Agreement the following insurance: i) "All Risk" property insurance which insures the party's respective property for its full replacement cost; and (ii) comprehensive general liability of one million dollars (\$1,000,000) with a combined limited for bodily injury and/or property damage for any one occurrence, and (iii) excess/umbrella coverage of two million dollars (\$2,000,000). The parties shall provide each other with current certificates of insurance within thirty (30) days of the execution of this Intergovernmental Agreement. All certificates of insurance must provide for guaranteed thirty (30) days written notice to all parties to this Intergovernmental Agreement of cancellation, non-renewal or material change

8. INDEMNITY:

Each party shall indemnify, defend and hold harmless the other party, its officers, departments, employees and agents from and against any and all suits actions, legal or administrative proceedings, claims, demands or damages of any kind or nature arising out of this Agreement which result from any act or omission of the indemnifying party, its agents, employees or anyone acting under its direction, control or on its behalf, whether intentional or negligent; provided, however, the extent of the foregoing indemnities shall be limited to and determined by the respective fault of each party, its agents, employees and anyone acting under its direction, control or on its behalf, in comparison with others (including but not limited to the other party) who may have contributed to or in part caused any such claim to arise.

9. NOTICE:

All notices, requests, demands, rent payments and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, or sent by overnight carrier to the address for notification specified below. Either party may change its address or phone or fax numbers for purposes of this Section by giving notice of such change in the manner provided in this Section.

A. All communication from the County to Elfrida concerning this Agreement shall be coordinated through Fire Chief Martin Sierras, Elfrida Fire District, 10293 N. Central Highway, Elfrida, Arizona 85610, email address

msierras@elfridafiredistrict.com, or such other individual as Elfrida may designate in writing.

B. All communication from Elfrida to County concerning this Agreement shall be coordinated through Joe Casey, Director, Information Technology, Cochise County, 1415 Melody Lane, Building D, Bisbee, AZ 85603, telephone number 520-432-8300, e-mail address jcasey@cochise.az.gov or such other individual as the County may designate in writing.

10. MISCELLANEOUS:

A. Non-Discrimination. To the extent applicable, the parties shall comply with all laws and regulations, including, but not limited to, Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and any State law that mandates that all persons, regardless of race, religion, handicap, color, age, sex, political affiliation, veteran's status, genetic code or national origin shall have equal access to employment and educational opportunities.

B. Entire Agreement. This document constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. This Agreement may be modified, amended, altered or extended only by a written amendment signed by the parties.

C. Jurisdiction and Applicable Law. This Agreement shall be governed by the laws of the State of Arizona. Jurisdiction and venue for any action under this Agreement shall be in Cochise County, Arizona.

D. Conflict of Interest. This Contract is subject to cancellation pursuant to the provisions of A.R.S. § 38-511 regarding Conflict of Interest.

E. Inspection and Audit. The parties agree to keep all books, accounts, reports, files and other records relating to this Contract for five (5) years after completion of the contract; and, in addition, agrees that such books, accounts, reports, files and other records shall be subject to audit pursuant to A.R.S. § 35-214.

F. Entire Agreement. This written Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and shall supersede all previous proposals, negotiations, representations, commitments, writings, and agreements. It may not be released, discharged, changed or modified, except by an instrument in writing, signed by a duly authorized representative of each of the parties except as expressly provided otherwise in this Agreement.

G. Rights of the Parties Only. The terms of this Agreement are intended only to define the respective rights and obligations of the parties. Nothing expressed herein shall break any rights or duties in favor of any potential third party beneficiary or other person, agency or organization.

H. Immigration Laws. The parties hereby warrant that they will at all times during the term of this Agreement comply with all federal immigration laws applicable to the parties' employment of its employees, and with the requirements of A.R.S. § 23-214(A) (together the "State and Federal Immigration Laws"). The parties shall further ensure that each sub-consultant who performs any work for the party under this Agreement likewise complies with the State and Federal Immigration Laws.

I. Approval of this Agreement. Before the Agreement shall become effective and binding upon the parties, it must be approved by the County Board of Supervisors and Elfrida's Board of Directors. This Agreement may be executed in counterparts and with electronic signatures, which shall have the same effect as though signed in pen and ink.

J. Waiver of Any Conflict. The parties acknowledge that the County Attorney has represented both parties and waive any conflict of interest that might arise from such dual representation.

K. Neither party has the right to assign its rights under this Agreement without the written consent of the other party, which shall not be unreasonably withheld.

COCHISE COUNTY

Ann English
Chair, Board of Supervisors


Date

ATTEST

Arlethe Rios, Clerk of Board

Date

ELFRIDA FIRE DISTRICT



Martin Sterras
Fire Chief

9/5/17

Date



Alma Garcia, District Board Chair

9/5/17

Date

ATTORNEY REVIEW

The foregoing Agreement between Cochise County and Elfrida Fire District has been reviewed by the undersigned, who have determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

COCHISE COUNTY:



Britt Hanson,
Chief Civil Deputy County Attorney




Date

ELFRIDA FIRE DISTRICT:



Britt Hanson,
Chief Civil Deputy County Attorney



Date

EXHIBIT A

**Use and Frequencies by Elfrida
(TBD)**

--Simulcast

--“PL” Steered