

**OPTION FOR SUB-LICENSE AGREEMENT  
BY ELFRIDA FIRE DISTRICT  
TO T-MOBILE WEST, LLC  
TO PLACE COMMUNICATION EQUIPMENT ON TOWER**

This Option for Sub-License Agreement (the “Sub-License Agreement”) is entered into between Elfrida Fire District, a political subdivision of the State of Arizona (“Elfrida”), Cochise County, a political subdivision of the State of Arizona (“County”), and T-Mobile West LLC, a Delaware Limited Liability Company (“T-Mobile”). Each party hereto shall be referred to herein as a “Party” or collectively, as the “Parties”.

1. RECITALS:

A. Pursuant to an agreement entered into effective September 26, 2017 (the “Agreement”), Elfrida and Cochise County, a political subdivision of the State of Arizona (the “County”) agreed that Elfrida would lease to the County certain land located at 10295 N. Central Highway, Elfrida (the “Property”), as more particularly described in Exhibit A, attached hereto and incorporated herein, for the purpose of constructing a communications tower (the “Tower”); that the County would place certain communications equipment on the Tower; that the County would grant a license to Elfrida to place certain of its communication equipment on the Tower; and that Elfrida’s license would include the right, with the County’s consent, to sub-license use of the Tower and a portion of the Property (the “Sub-License”) and receive revenues from the Sub-License.

B. Elfrida desires to sub-license the use of the Tower to T-Mobile on the terms and conditions set forth in this Sub-License Agreement, which are acceptable to the County.

C. T-Mobile has reviewed the Agreement, as well as this Sub-License Agreement, and desires that Elfrida grant it an option to sub-license the Tower 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 on the terms and conditions set forth herein.

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## 2. AGREEMENT:

A. Sub-License to T-Mobile; Option. Elfrida grants T-Mobile an option to sub-license the Tower and a one hundred seventeen (117) square foot portion of the Property (collectively, the “Premises”), as more particularly described in Exhibit B, attached hereto and incorporated herein, to enter and erect, operate and maintain radio communication equipment and antennas on the Tower on the terms and conditions set forth herein (the “Option”). The County consents to the Option and possible sub-license on the terms and conditions set forth herein.

B. Consideration for the Option. The Option shall commence on the Effective Date (defined below) and shall continue for a period of one (1) year (the “Option Period”). The Option Period will be automatically extended for up to one (1) additional one (1) year period unless T-Mobile provides written notice to Elfrida and the County of its election not to renew or exercise its Option. For the initial year of the Option Period and the subsequent Option Period extension, T-Mobile shall pay Elfrida one thousand five hundred dollars (\$1,500). Payment for the initial Option Period shall be made within ten (10) days of the Effective Date, and payments for the Option Period extension shall be made on the date that the Option is renewed.

C. Consideration for the Sub-License. If T-Mobile exercises its Option, upon the Commencement Date (defined below) T-Mobile shall pay Elfrida a sub-license fee (the “License Fee”) of fourteen hundred dollars (\$1,400) per month for the Initial Term (defined below), and sixteen hundred eighty dollars (\$1,680) per month for the Renewal Term (defined below). T-Mobile shall deliver the monthly License Fee to Elfrida at the address specified below, or by electronic payment. The first License Fee will be due within twenty (20) business days of the Commencement Date and, thereafter, on or before the fifth (5<sup>th</sup>) day of each month.

### D. Effective Date and Term of Sub-License.

a. The Effective Date of the Option shall be the date when this Agreement is signed by all Parties hereto.

b. The Commencement Date of the Sub-License shall be the date that T-Mobile informs both Elfrida and the County of its intent to exercise its Option.

c. The Initial Term shall be for ten (10) years from the Commencement Date.

d. The Renewal Term shall be for ten (10) years following the end of the Initial Term. If T-Mobile does not want to renew the Sub-License for the Renewal Term, it shall inform both Elfrida and the County in writing at least three (3) months before the

end of the Initial Term; otherwise, renewal of the Sub-License for the Renewal Term shall be automatic.

E. Disposition of Tower. If the County ceases using the Tower, and wishes to terminate this Sub-License 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.

### 3. FACILITIES; UTILITIES; ACCESS:

A. Title to Lessee Facilities; Removal. Title to Elfrida's, the County's and T-Mobile's respective facilities and equipment shall be held by each Party. With regard to T-Mobile's facilities, Elfrida and County hereby waive any and all lien rights they may have concerning the T-Mobile's facilities. 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 within ninety (90) days of the expiration or at earlier termination of the Sub-License Agreement. T-Mobile shall repair any damage to the Property caused by such removal of its facilities. The failure of either Party to remove their respective facilities within the ninety (90) days period 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. T-Mobile shall timely pay for the electricity it consumes in its operations at the rate charged by the servicing utility company. T-Mobile shall obtain, at its sole cost and expense, separate 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. T-Mobile shall have the right to install an emergency gasoline, butane, diesel or other fuel-powered generator(s) on the Property, at its sole cost and expense. Such installation shall comply with all applicable safety and environmental laws and regulations. T-Mobile shall be solely responsible for securing any such generator.

D. Access. Each Party has the right to enter the Property twenty-four (24) hours a day, seven (7) days per week for purposes of constructing, installing, operating, maintaining and repairing their respective facilities; provided, however, that T-Mobile shall be allowed access to the Tower only with at least twenty-four (24) hours' notice to the County, except in the case of emergency.

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E. T-Mobile shall promptly reimburse Elfrida or the County, as the case may be, for any damage to Elfrida's or the County's equipment, or to the Tower, caused by T-Mobile.

4. NON-INTERFERENCE:

A. Interference Study. At County's request, T-Mobile 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. T-Mobile acknowledges that the disclosed uses and frequencies, as identified on Exhibit C, will not interfere with County's and Elfrida's uses of the Property, and covenants that T-Mobile's uses will not interfere with such disclosed uses and frequencies.

B. Elimination of Interference. T-Mobile 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 whose installations predate that of T-Mobile's.

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

D. No Interference to T-Mobile. Elfrida and County shall not use, nor shall County and Elfrida permit its tenants, licensees, employees, invitees or agents to use, any portion of the Property or Tower in any way which interferes with the operations of T-Mobile. In the event of the occurrence of any such interference, Elfrida shall terminate the interference, or if such interference is not caused by Elfrida, Elfrida shall use its best efforts to terminate such interference. If after exhausting Elfrida's best efforts, Elfrida is unable to terminate such interference, T-Mobile may terminate this Sub-License Agreement without penalty. Nothing herein shall prevent T-Mobile from pursuing injunctive relief against the interfering party.

5. TERMINATION:

A. Termination for Default. If any Party fails to perform any of its obligations hereunder, the other Party shall provide written notice to such Party at the address indicated 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 Sub-License Agreement to which the failure applies or to the Sub-License Agreement as a whole if the default applies to the entire Sub-License Agreement, by delivering to the

defaulting Party thirty (30) days' 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 thirty (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 T-Mobile may cure a failure in the payment of money exceed ten (10) days from receipt of written notice from Elfrida.

B. Destruction of or Damage to the Tower: If any portion of the 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 Sub-License Agreement by written notice to T-Mobile and Elfrida within sixty (60) days of such destruction or damage. Notwithstanding anything to the contrary contained herein, in the event County has not repaired or rebuilt the Tower within ninety (90) days of such damage or destruction, T-Mobile may terminate this Sub-License Agreement upon written notice to Elfrida.

C. Termination of County's Underlying Lease. T-Mobile acknowledges that, under the Agreement, 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 the 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. If the County terminates the Agreement, the County's obligations and rights under this Sub-License Agreement shall cease, and if Elfrida chooses not to take ownership of the Tower, Elfrida, in its discretion, may terminate this Sub-License Agreement or negotiate with T-Mobile to take ownership of the Tower under a new lease of the Property.

D. T-Mobile Termination. T-Mobile may terminate this Sub-License Agreement without further liability, upon thirty (30) days prior written notice to Elfrida, for any of the following reasons: (i) changes in local or state laws or regulations which adversely affect T-Mobile's ability to operate; (ii) a Federal Communications Commission ("**FCC**") ruling or regulation that is beyond the control of T-Mobile; (iii) technical or economic reasons; or (iv) if T-Mobile is unable to obtain any governmental approval required for the construction or operation of T-Mobile's facilities. Upon ninety (90) days prior written notice to Elfrida, T-Mobile may terminate this Sub-License Agreement for any or no reason.

6. INSURANCE: Each Party shall carry during the term of this Sub-License 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 Effective Date.

7. 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 Sub-License 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.

8. 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. Any 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 to Elfrida concerning this Sub-License Agreement shall be coordinated through Fire Chief Martin Sierras, Elfrida Fire District, 10293 N. Central Highway, Elfrida, Arizona 85610, email address [msierras@elfridafiredistrict.com](mailto:msierras@elfridafiredistrict.com), or such other individual as Elfrida may designate in writing.

B. All communication to County concerning this Sub-License 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](mailto:jcasey@cochise.az.gov) or such other individual as the County may designate in writing.

C. All communication to T-Mobile concerning this Sub-License Agreement shall be coordinated through T-Mobile USA, Inc., 12920 SE 38<sup>th</sup> St., Bellevue, WA 98006, Attn: Lease Compliance/PH45407A or any individual as T-Mobile may designate in writing.

9. ASSIGNMENT: T-Mobile shall have the right to assign or otherwise transfer this Sub-License Agreement granted herein upon written notice to Elfrida. Upon such assignment, T-Mobile shall be relieved of all liabilities and obligations hereunder and Elfrida shall look solely to the assignee for performance under this Sub-License

Agreement and all obligations hereunder; provided T-Mobile and assignee execute an Assignment and Assumption Agreement in which assignee expressly assumes all obligations and liabilities under Sub-License Agreement.

#### 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 Sub-License Agreement may be modified, amended, altered or extended only by a written amendment signed by the Parties.

C. Jurisdiction and Applicable Law. This Sub-License 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 Sub-License Agreement 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 Sub-License Agreement 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. Rights of the Parties Only. The terms of this Sub-License 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.

G. Immigration Laws. The Parties hereby warrant that they will at all times during the term of this Sub-License 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 each Party under this Sub-License Agreement likewise complies with the State and Federal Immigration Laws.

H. Approval of this Agreement. Before this Sub-License Agreement shall become effective and binding upon the Parties, it must be approved by the County Board of Supervisors, Elfrida’s Board of Directors, and signed by all Parties hereto. This Sub-License Agreement may be executed in counterparts and with electronic signatures, which shall have the same effect as though signed in pen and ink.

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

**COCHISE COUNTY**

**ELFRIDA FIRE DISTRICT**

\_\_\_\_\_  
Ann English  
Chair, Board of Supervisors

\_\_\_\_\_  
Martin Sierras  
Fire Chief

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**ATTEST**

**T-MOBILE WEST, LLC**

\_\_\_\_\_  
Arlethe Rios, Clerk of Board

\_\_\_\_\_  
Danny Bazerman, Area Director  
Network Engineering and Ops,  
Mountain Region

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
T-Mobile Legal Approval

**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**

### **Description of the Property**

## **EXHIBIT B**

### **Description of the Premises**

## **EXHIBIT C**

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

**--Simulcast**

**--“PL” Steered**