

**LICENSE FOR BENSON HOSPITAL TO PLACE COMMUNICATION
EQUIPMENT ON COCHISE COUNTY’S MICROWAVE TOWER IN
BENSON**

This Agreement ("Agreement") is entered into between **Benson Hospital**, an Arizona nonprofit corporation, whose principal address is 450 S. Ocotillo Avenue, Benson, Arizona 85602, and **Cochise County**, a political subdivision of the State of Arizona, whose address is 1415 W. Melody Lane, Bisbee, Arizona 85603 ("**County**" or "**Licensor**").

1. Recitals.

A. The County owns and operates a communications tower located at, 126 West 5th Street, Benson, Arizona, and commonly known as the Benson Regional Service Center Tower (the "Tower").

B. The Hospital desires to license a portion of the Tower and the real property on which it stands (collectively the "Property") from the County for the purpose of installing, using and maintaining antennas and associated electronic equipment for two (2) Ubiquiti PBE-5AC-400-ISO antennas, one (1) Ubiquiti EP-R8 Router, and (1) Ubiquiti EP-54V Power Supply.

C. The County desires to license a portion of the Tower to Licensee on the terms and conditions set forth in this Agreement.

Now, therefor, in consideration of the mutual covenants hereinafter set forth, the parties hereby agree as follows:

2. Agreement to License the Tower.

A. Use of Tower. The County hereby grants the Licensee the right to install, maintain, and operate, at Licensee’s sole cost and expense, two (2) Ubiquiti PBE-5AC-400-ISO antennas, one (1) Ubiquiti EP-R8 Router that will be mounted to the Tower, and one (1) Ubiquiti EP-54V Power Supply that will be located on the Property. Licensee must also install at Licensee’s sole cost and expense, a separate electrical circuit to power its equipment.

B. Use of Other Space. The County will provide a location for Licensee's Ubiquiti EP-54V Power Supply that will be housed close to a power outlet, and will allow Licensee to run a line from the Ubiquiti EP-54V Power Supply to the Ubiquiti EP-R8 Router that will be mounted on the tower.

C. Licensee's Access to Tower. Licensee will have 24/7/365 access to the Tower. However, Licensee must provide notice of Tower entry/access to the County at least 24 hours before Licensee's entry/access to the Tower. Licensee's authorized technicians are the only persons allowed access to the Tower and equipment. Licensee's tower climbers will be properly certified and will utilize proper equipment and techniques when climbing and working upon the Tower.

D. Non-Exclusive Use. The rights granted to the Licensee for use of the Tower are not exclusive. The County reserves the right to license the Tower to others, or use the Tower itself, on the condition that any such additional use does not substantially interfere with the Licensee's use of the Tower.

3. Consideration for License. License Fee. Licensee will pay to the County an annual fee of FIVE HUNDRED DOLLARS (\$500.00) per year. Payment will be made in advance with the first annual payment being made promptly after signing of this Agreement. Thereafter, at the time of yearly renewal, a single annual payment of FIVE HUNDRED DOLLARS (\$500.00) will be made for the upcoming year.

4. Term of Agreement. This Agreement shall become effective when signed by all parties, unless terminated earlier as provided hereinbelow. The term of the Agreement shall be one (1) year and shall be automatically renewed for ten (10) successive one (1) year periods, unless either party gives written notice of its intention not to renew at least sixty (60) days before expiration of the current term.

5. Condition of the Tower

A. Current Condition of the Tower. The Licensee has inspected the Tower and related facilities and determined that they are suitable for its purposes. It is expressly understood that the County makes no warranty about the condition of the Tower or its suitability for Licensee's purposes. By entering into this Agreement, the County is not assuming any responsibility to Licensee for maintaining the Tower in any particular condition. The Licensee assumes all responsibility for its equipment, including any damage thereto.

B. Destruction of or Damage to the Tower. If any 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 Licensee shall have the right to terminate this Agreement by written notice to the County within thirty (30) days of such destruction or damage.

6. Equipment; Utilities.

A. Title to Equipment; Removal. Title to the equipment that Licensee is installing shall remain Licensee's personal property and are not fixtures. Licensee has the right, and the obligation, to remove all such equipment at its sole expense before expiration or at earlier termination of the Agreement. Licensee shall repair any damage to the Tower (or any of the County's other property) caused by such removal, installation or maintenance.

B. Utilities. Licensee shall pay for electricity required to operate and maintain its equipment.

C. Elimination of Interference. Licensee agrees that it will eliminate, in a prompt and timely manner, any interference that its equipment causes with the operations of other users at the Tower, save and except, any users added to the Property after the dating of this Agreement.

D. No Additional Equipment without Consent. Following the initial installation, Licensee agrees not to install additional equipment on the Tower without obtaining the written consent of the County, except to replace faulty equipment with similar equipment.

7. 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 Section Ten (10) 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 Licensee may cure a failure in the payment of money exceed a single, ten (10) day period.

8. Insurance. The Licensee shall carry during the term of this Agreement the following insurance: (i.) “All Risk” property insurance which insures the Licensee’s property for its full replacement cost; and (ii.) comprehensive general liability of \$1,000,000, with a combined limited for bodily injury and/or Property damage for any one occurrence. Proof of insurance is to be provided by Licensee in the form of an annual Accord Certificate for the Property.

9. 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.

10. 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 Licensee concerning the use of the subject property shall be coordinated through John Roberts, 450 South Ocotillo, Benson AZ, 85602, rob@bensohospital.org, (520) 720-6497. Alternate: Antonio Kornegay, 450 South Ocotillo, Benson AZ, 85602, akornegay@bensohospital.org, (520) 720-6498, or such other individual as Licensee may designate in writing.

B. All communication from Licensee to County concerning the use of the subject property shall be coordinated through Joe Casey, Director/Chief Information Officer, Information Technology, Cochise County, 1415 Melody Lane, Building D, Bisbee, AZ 85603, jcasey@cochise.az.gov, (520) 432-8300, or such other individual as the County may designate in writing.

11. Assignment and Subleasing. Except as to any parent, subsidiary or affiliate of Licensee, the Licensee shall not assign or sublease all or any part of its interest in this Agreement without the prior written consent of the County, which consent shall not be unreasonably withheld or delayed.

12. Choice of Law; Attorneys Fees.

A. Choice of Law and Venue. 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.

B. Attorney's Fees. If either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to have and recover from the losing party reasonable attorney's fees and costs of suit.

13. General Provisions.

A. Amendment. Any amendment or modifications of the term of this Agreement shall be in writing and shall be effective only after approval by both Licensee and County.

B. Notice Pursuant to A.R.S. § 38-511. Notice is given that this Agreement is subject to cancellation by the County pursuant to A.R.S. § 38-511. In such an event, any use of Licensee Facilities hereunder shall likewise be cancelled and the applicable provisions of Section 7 of this Agreement shall apply.

C. Severance. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall continue to be valid and enforceable to the full extent permitted by law.

D. Relationship. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third person to create the relationship of principal and agent, partnership, joint venture or any association between the County and Licensee other than contracting parties.

E. Remedies. Either party may pursue any remedies provided by law for the breach of this Agreement. No right or remedies are intended to be exclusive with any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law, equity or by virtue of this Agreement.

14. 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. 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.

C. 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.

D. 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.

E. 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.

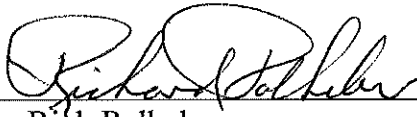
F. Approval of this Agreement. Before the Agreement shall become effective and binding upon the parties, it must be approved by the County Board of Supervisors and Benson Hospital's Chief Executive Officer, Rich Polheber. This Agreement may be executed in counterparts and with electronic signatures, which shall have the same effect as though signed in pen and ink.

DATED this _____ day of _____, 2017.

COCHISE COUNTY

BENSON HOSPITAL

By: _____
Ann English, Chairman
Board of Supervisors

By: 
Rich Polheber
Chief Executive Officer

ATTEST:

Arlethe Rios, Clerk of the
Board of Supervisors

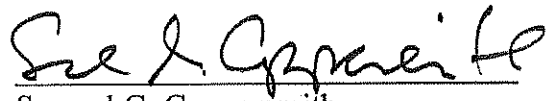
ATTORNEY REVIEW

The foregoing Agreement between Cochise County and Benson Hospital 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:

Christine J. Roberts,
Chief Civil Deputy County Attorney

BENSON HOSPITAL:



Samuel G. Coppersmith,
Attorney for Licensee