

## LICENSE AGREEMENT

This License Agreement is entered between the Cochise County Library District, a political subdivision of the state of Arizona, hereafter referred to as "LIBRARY DISTRICT", and the Elfrida Fire District, a political subdivision of the State of Arizona, hereinafter referred to as the FIRE DISTRICT.

### RECITALS

**WHEREAS**, the LIBRARY DISTRICT has operated a branch library in Elfrida since 2003 in a facility currently owned by the Elfrida Community Alliance, Inc., a nonprofit corporation ("ECA"), located at 10552 N. Highway 191, Elfrida, Arizona (the "Branch Library"); the legal description of the Branch Library is attached hereto as Exhibit A; and

**WHEREAS**, Cochise County, on behalf of the LIBRARY DISTRICT, is acquiring title to the Branch Library from ECA, but the Branch Library does not have a restroom; and

**WHEREAS**, the FIRE DISTRICT, in a transaction related to the County's acquisition of the Branch Library, is acquiring title to the Elfrida Community Center (the "Community Center") from ECA, which is adjacent to the Branch Library, and the Community Center does have restrooms; the legal description of the Community Center is attached hereto as Exhibit B; and

**WHEREAS**, the LIBRARY DISTRICT intends to install a restroom at the Branch Library, but until such time as that is complete, it desires that its employees, volunteers and patrons have access to the restrooms in the Community Center; and

**WHEREAS**, in order to access the restrooms in the Community Center, LIBRARY DISTRICT employees, volunteers and patrons will need to traverse the Community Center parking lot; and, further, in order for vehicles to park at the Branch Library such vehicles will need to traverse the Community Center parking lot; and

**WHEREAS**, the FIRE DISTRICT acknowledges the importance of the Branch Library to the community and, desiring to contribute to the community, is willing to provide such access.

**NOW THEREFORE**, in consideration of the mutual covenants set forth herein,

LIBRARY DISTRICT and the FIRE DISTRICT agree to the following:

## **AGREEMENT**

### **I. LICENSE**

The FIRE DISTRICT hereby grants to the LIBRARY DISTRICT a license for access by employees, volunteers and patrons at the Branch Library to use the restrooms in the Community Center. The FIRE DISTRICT further grants to the LIBRARY DISTRICT a license for employees, volunteers and patrons to use the parking lot at the Community Center to traverse to and from the Branch Library and Community Center to use the restroom at the Community Center. Further, the FIRE DISTRICT grants the LIBRARY DISTRICT a license for vehicles to traverse the Community Center parking lot in order to access parking at the Branch Library. And finally, the FIRE DISTRICT grants the LIBRARY DISTRICT a license to use the Community Center, subject to availability and upon sufficient notice, for special library events. The LIBRARY DISTRICT acknowledges and agrees that such use of the restrooms, parking lot and Community Center will be nonexclusive.

### **II. TERM OF THE LICENSE**

The license to use the restrooms and parking lot for access to the restrooms shall commence upon the execution of this License Agreement by all parties hereto and shall continue until such time as the bathroom to be constructed by LIBRARY DISTRICT at the Branch Library is completed and functional. The license to use the Community Center parking lot for vehicle access to Branch Library parking shall be in perpetuity. The license to use the Community Center for special library events shall continue indefinitely so long as the Branch Library is used for library purposes.

### **III. INDEMNIFICATION**

To the maximum extent permitted by law, each Party (as "**Indemnitor**") agrees to indemnify, defend and hold harmless the other Party, its officers, officials, agents, employees, or volunteers (as "**Indemnitee**") from and against any and all claims, losses, liability, costs or expenses to which any Indemnitee may become subject under any theory of liability whatsoever, including reasonable attorney's fees, court costs and the costs of appellate proceedings arising out of actions taken in performance of this Agreement (hereinafter collectively referred to as "**Claims**") to the extent that such Claims are caused by the acts, omissions, negligence, misconduct, or other fault of the

Indemnitor, its officers, officials, agents, employees, or volunteers. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Indemnitor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. Provided, however, notwithstanding any language to the contrary, the LIBRARY DISTRICT agrees to indemnify the FIRE DISTRICT for any damage caused by LIBRARY DISTRICT patrons to the FIRE DISTRICT bathrooms.

#### **IV. INSURANCE**

1. LIBRARY DISTRICT agrees to take out and keep in force during the life of this Agreement, general liability insurance in such amounts as is necessary to protect against any liability incident to the duties of the LIBRARY DISTRICT under this Agreement, or the LIBRARY DISTRICT'S use of the Community Center.

#### **V. NOTICE**

All notices required to be provided by this Agreement or arising from this Agreement shall be provided in writing to the following:

For the LIBRARY DISTRICT: Amadee Ricketts, Library Director  
County of Cochise  
P.O. Drawer AK  
Bisbee, AZ 85603

For the FIRE DISTRICT: Martin Sierras, Fire Chief  
Elfrida Fire District  
P.O. Box 68  
Elfrida, AZ 85610

#### **VI. CANCELLATION**

This Agreement may be canceled pursuant to A.R.S. 38-511, the applicable provisions of which are incorporated herein by reference.

#### **VII. SEVERANCE**

The Parties hereto shall comply with all applicable laws, rules, regulations and ordinances, as may be amended. If any provision of this Agreement or portion thereof is held invalid, illegal or unenforceable, such provision or portion thereof shall be severed from this Agreement and shall have no effect on the remaining provisions of this Agreement, which shall remain in full force and effect.

#### **VIII. RIGHTS AND REMEDIES**

No provision in this document shall be construed, expressly or by implication, as a waiver by either party of any existing or future right and/or remedy available by law in the event of any claim of default or breach of contract. The failure of any party to insist upon the strict performance of any term or condition of the Agreement or to exercise or delay the exercise of any right or remedy provided in the Agreement or by law, or the acceptance of materials or services, or the payment for materials or services, shall not release the other party from any responsibilities or obligations imposed by the Agreement or by law, and shall not be deemed a waiver of a right of a party to insist upon the strict performance of the Agreement.

#### **IX. GOVERNING LAW, JURISDICTION, VENUE**

This Agreement shall be governed by the laws of the State of Arizona. The parties hereby agree that the venue for the resolution of any dispute under this Agreement shall be and shall remain in Cochise County.

#### **X. IMMIGRATION LAWS**

The parties hereby warrant that they will 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.

#### **XI. RECORDS**

The parties agree to keep all books, accounts, reports, files, and other records relating to this 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.

**XII. PUBLIC RECORD LAWS**

Notwithstanding any other provision of the Agreement, the parties understand that the LIBRARY DISTRICT and FIRE DISTRICT are public entities and, as such, are subject to Arizona's public records law, A.R.S. § 39-121 et. seq.

**XIII. CONTRACT AMENDMENTS**

This Agreement may be modified only by a written Amendment signed by persons duly authorized to act in this capacity on behalf of the parties.

**XIV. ENTIRE AGREEMENT**

This Agreement contains all the representations and the entire understanding and agreement between the parties pertaining to the occupancy and use of the subject property or any other matters connected therewith. All correspondence, memoranda, or oral or written agreements pertaining to the property or the parties hereto, which originated before the date of this Agreement are null, void and no longer in force and with no effect, and are replaced in total with this Agreement unless otherwise expressly stated in this Agreement. This License Agreement shall not be altered, amended, or modified except by a writing signed by authorized representatives of the parties.

**XV. ARBITRATION**

To the extent required by A.R.S. §§ 12-133 and 12-1518(B), the parties agree to resolve any dispute arising out of this Agreement by arbitration.

**XVI. NO JOINT VENTURE**

It is not intended by this Agreement to, and nothing contained in this Agreement shall, be construed to create any partnership, joint venture, or employment relationship between the parties or create any employer-employee relationship between the parties' employees. Neither party shall be liable for any debts, accounts, obligations or other liabilities whatsoever of the other party, including, but without limitation, the other party's obligation to withhold Social Security and income taxes for itself or any of its employees.

**XVII. NO THIRD-PARTY BENEFICIARIES**

Nothing in this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the maintenance of public facilities different from the standard of care imposed by law.

**XVIII. E-VERIFY COMPLIANCE**

The parties warrant that they shall comply with all federal immigration laws and regulations that relate to their employees and their compliance with ARS § 23-214(A). The parties further agree that any failure to comply with the requirements of this section shall be deemed a material breach of this Agreement that may result in termination of this Agreement. The parties further agree that they each retain the legal right to inspect the papers of any one of their employees who performs work under this Agreement to ensure that the parties are complying with the provisions of this section.

**XIX. WAIVER OF CONFLICT OF INTEREST**

Both parties have authorized the County Attorney's Office, acting through the undersigned attorney on their behalf, to review and approve this Agreement as to form and waive any conflict of interest in so doing.

**IN WITNESS HEREOF**, the parties have caused this Agreement to be executed by their duly authorized representatives.

APPROVED:  
ELFRIDA FIRE DISTRICT

By: Alma Garcia  
Alma Garcia, Chair

12/13/19  
DATE

ATTEST:  
Rosa M. Aguallo  
Secretary

APPROVED:  
COCHISE COUNTY LIBRARY DISTRICT

\_\_\_\_\_  
DATE

ATTEST:

\_\_\_\_\_  
Arlethe R. Morrison  
Clerk of the Board

By: \_\_\_\_\_  
Thomas E. Borer, Chair

APPROVED AS TO FORM:

\_\_\_\_\_  
Britt Hanson, Chief Civil Deputy  
Cochise County Attorney's Office