

**LICENSE AND ACCESS AGREEMENT BETWEEN
COCHISE COUNTY AND THE CITY OF DOUGLAS, ARIZONA,
FOR TOWER AND OTHER EQUIPMENT LOCATED AT
661 G AVENUE, IN DOUGLAS, ARIZONA**

THIS AGREEMENT ("Agreement") is entered into by and between the City of Douglas ("Douglas"), a municipal corporation, whose address is 425 E. 10th Street, Douglas, Arizona, 85607 and Cochise County ("County"), a political subdivision of the state of Arizona, whose address is 1415 W. Melody Lane, Building G, Bisbee, Arizona, 85603. The City of Douglas and Cochise County may each be referred to herein as a "Party" or collectively as "Parties" to this Agreement.

RECITALS

1. On June 4, 2014, County agreed to transfer legal ownership of real property ("Property") located at 661 G Avenue, in Douglas, Arizona, to Douglas, pursuant to an Amendment to Intergovernmental Agreement Between the City of Douglas and the County of Cochise for the Establishment of a Regional Service Center in the City of Douglas, filed with the Cochise County Recorder on June 6, 2014, and identified as Cochise County Recorder number 2014-09813 (the "Amendment").
2. Pursuant to the Amendment, Douglas acknowledged and agreed that, upon acquiring legal ownership of the Property, it would grant a license to County in which County would have twenty-four (24) hour, seven (7) days a week access to a County-owned communications tower, generator, shed, and equipment rack ("collectively referred to as "Equipment") located on the Property.
3. The Equipment is used to provide public safety two-way radio and network connectivity to the Regional Service Center and to another communications building located east of Douglas.
4. Although the Amendment was recorded, it was recorded without a legal description; the purpose of this License and Access Agreement is to provide a recordable document, setting for the parties' Agreement under the Amendment, with a legal description.
5. The legal transfer of the Property from the County occurred through a Special Warranty Deed filed with the Cochise County Recorder's Office on June 6, 2014, and identified as Cochise County Recorder number 2014-09815.

6. However, the transfer of the Property only included parcel number 409-08-102, but should have included two other adjacent and related parcels, parcel numbers 409-08-103 and -104, as that was the intent of the parties.

7. Concurrent with the approval, execution and recordation of this License and Access Agreement, the County will be transferring to Douglas, by special warranty deed, title to parcel numbers 409-08-103 and -104. The legal descriptions of all three parcels is attached hereto as Exhibit A.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, the Douglas and County agree as follows:

AGREEMENT

1. Douglas hereby agrees to grant County a license to access the Equipment owned by County, located on Douglas's Property as described in the attached exhibit for an indefinite term. Only County employees shall have access to the Equipment. No other person or entity shall be granted access to the Equipment.

2. Douglas agrees that should it be necessary to change any locks, codes, or keys to any Property gates or doors that provide access to County's Equipment, Douglas will provide County with the new lock combinations, keys, or codes as soon as reasonably possible.

4. Douglas agrees that County shall have exclusive access to the Equipment seven (7) days a week and twenty-four (24) hours a day.

5. Douglas agrees that County may replace, add to, or reconfigure the Equipment as needed and shall have uninterrupted access for that purpose.

6. Douglas acknowledges that a portion of the Equipment is located inside the Property building. Douglas agrees that all of the above provisions apply to the access of this Equipment as well.

7. This Agreement shall be effective upon execution by both Parties and shall continue indefinitely or until such time as County determines otherwise.

8. This Agreement may be terminated by either party within three years after its execution if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of a party is, at any time while the contract or any extension of the contract is in effect, an employee or agent of the other party with respect to the subject matter of the contract pursuant to A.R.S. § 38-511.

9. The Parties shall comply with all federal, state, and local laws, rules, regulations, standards, and Executive Orders, without limitation to those designated within this Agreement. The laws and regulations of the State of Arizona shall govern the rights of the Parties, the performance of this Agreement, and any disputes hereunder. Any action relating to this Agreement shall be brought in an Arizona court in Cochise County.

10. If any provision of this Agreement or any application thereof to the Parties or any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provision or application and, to this end, the provisions of this Agreement are declared to be severable.

11. Each Party may at any time request an amendment to this Agreement. This Agreement is subject to amendment upon the mutual consent of the respective Parties by the mutual approval of a formal written amendment to this Agreement.

12. To the fullest extent permitted by law, each party (indemnitor) shall defend, hold harmless, and indemnify the other Party (indemnitee), its officers, agents, and employees, from all claims, demands, suits, liability, damages, loss or expenses ("claims") that result from the negligence or intentional torts of the indemnitor, its agents, officers and employees, in the performance of this Agreement, but only to the extent that such claims arise from such negligence or intentional torts. The extent of the foregoing liabilities shall be limited to and determined by the respective fault of the Parties, their agents, officers and employees, 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. This duty to defend, indemnify, and hold harmless is not negated or otherwise limited by the characterization of the underlying duty as a "non-delegable duty" for which either Party may be vicariously liable, as a matter of law, and does not expire.

13. 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.

14. 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.

15. Neither party may assign this Agreement without the other party's written consent.

16. 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.

17. The parties agree to submit to mandatory arbitration pursuant to A.R.S. § 12-133(A).

18. Any notices, questions, comments, and concerns regarding the duties and responsibilities of the parties under this Agreement shall be directed to:

County:

Cochise County Administrator
1415 Melody Ln., Bldg. G
Bisbee, AZ 85603

Douglas:

City Manager
City Hall
425 E. 10th St.
Douglas, AZ 85607

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year set forth below.

CITY OF DOUGLAS

COCHISE COUNTY

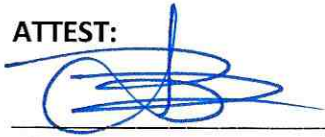
By: Jerene Watson
Jerene Watson, City Manager

By: _____
Tom Borer, Chairman

Dated: 5/15/2020

Dated: _____

ATTEST:

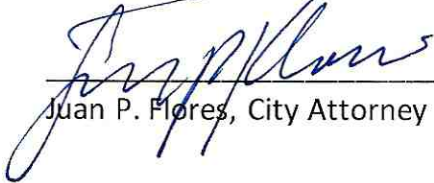


Alma Andrade,
Douglas Acting City Clerk

ATTEST:

Kim Lemons,
Clerk of the Board of Supervisors

APPROVED AS TO FORM:



Juan P. Flores, City Attorney

APPROVED AS TO FORM:

Britt Hanson

Britt Hanson, Deputy County Attorney

Exhibit A

**Lots 17 & 18, Lot 19 & Lots 20 thru 23 Block 64 Douglas Townsite, according to Map
Filed Number 12, records of Cochise County Arizona**