

## TOWER LICENSE AND USE AGREEMENT

This Agreement is entered into between Sequoia Farm Foundation, an Illinois non-profit corporation that is duly qualified to conduct business in the State of Arizona, whose principal address is 145 N. Merchant Street, Decatur, Illinois 62523 (“**Foundation**”), and Cochise County, a political subdivision of the State of Arizona, whose principal address is 1415 W. Melody Lane, Bisbee, Arizona 85603 (“**County**”), with reference to the following facts:

A. The Foundation owns a tract of land known as Jordan Farm in Cochise County, Arizona, and described as the West Half of Section 22, Township 16 South, Range 26 East of the Gila and Salt River Base and Meridian in said county and state (the “**Tract**”).

B. The Foundation is constructing a radio tower and related communications equipment and improvements (for brevity, collectively the “**Radio Tower**” and generally shown on the Detailed Site Plan attached hereto as Exhibit A) on a rectangular portion of the Tract consisting of approximately 4,200 square feet (as shown more particularly on the Site Survey attached hereto as Exhibit B, the “**Property**”) for the use by the Foundation of telecommunications equipment and transmission of data.

C. The County seeks a license for the non-exclusive use of the Radio Tower to install, operate, maintain, and replace or remove from time to time, its own telecommunications equipment and facilities (for brevity, the “**County Equipment**”), together with the non-exclusive right to use an access road that traverses a portion of the Tract and provides ingress and egress to and from the Property and Swanson Road (as more particularly shown on the Site Survey attached hereto as Exhibit B, the “**Access Road**”).

D. The Foundation is willing to grant the license described herein to the County for the use of the County Equipment on the Radio Tower and the use of the Access Road, all on the terms set forth in this Agreement.

NOW THEREFORE, INTENDING TO BE LEGALLY BOUND, the County and the Foundation agree as follows:

1. Equipment License. The Foundation hereby grants to the County a non-exclusive license to use the Property for the limited purpose of installing, operating, maintaining, replacing, and removing the County Equipment on the Radio Tower. The County Equipment may be installed at any height on the Radio Tower, so long as the operation of the County Equipment does not interfere with the Foundation’s operation and use of the Radio Tower. The County agrees to keep the County Equipment in good, safe, and sightly condition and repair for the period that any such equipment is actually installed at the Property. The County agrees to promptly repair and/or restore any portion of the Property, the Radio Tower, or the Access Road that is injured or damaged by or through the actions or omissions of the County and its agents, employees, and contractors or due to the use of the County Equipment at the Property. The County agrees to give the Foundation reasonable advance notice before entering the Property to install, work on, or remove the County Equipment; provided that advance notice is not required for routine checks or maintenance or in the event of emergencies. Other than its rights and

obligations with respect to the County Equipment, the County may not make other alterations or improvements to the Property, the Tract, or the Access Road without the Foundation's prior written consent thereto and complying with any reasonable conditions made to such consent. Any work at the Property or Tract of any sort completed by or on behalf of the County shall be completed in a good and workmanlike manner, free from liens, and in compliance with all applicable laws.

2. Access License. The Foundation further grants to the County a non-exclusive license to use the Access Road for the limited purpose of providing vehicular and pedestrian access for employees and agents of the County to and from the Property and Swanson Road in connection with the use by the County of the County Equipment. The County will comply with any reasonable rules established by the Foundation from time to time for the orderly use of the Access Road. The Foundation reserves the right to close the Access Road from time to time on a temporary basis for making repairs, improvements or alterations to the same.

3. Term. There is no license fee charged to the County under this Agreement. This Agreement shall continue in force and effect for a term of twenty-five years from the date of mutual execution hereof; provided that either party may terminate this Agreement on not less than 6 months prior written notice to the other party or immediately if the Radio Tower is severely damaged or destroyed by a casualty event (and the Foundation elects not to rebuild) or if the other party fails to cure a breach of this Agreement within 5 business days after receipt of written notice of such breach. If the County removes all County Equipment without replacing the same within 6 months of removal, then the County shall be deemed to have abandoned its interests in the Property and this Agreement shall terminate. This Agreement may be renewed upon mutual agreement of the parties. Notwithstanding anything herein to the contrary, nothing herein shall require the Foundation to construct the Radio Tower or to reconstruct it after a casualty, and this Agreement may be immediately terminated by either party if the Foundation does not construct or reconstruct the Radio Tower for any reason (including a failure to obtain necessary permits, if any).

4. Surrender. Upon the expiration or earlier termination of this Agreement, the County shall immediately take all steps to remove the County Equipment and any other alterations made by or for the County from the Property and repair any damage caused by such removal, all at the County's sole expense. Any County Equipment that remains at the Property longer than 30 days after such expiration or termination date shall be deemed abandoned by the County, and the Foundation shall have all rights to remove and dispose of such abandoned equipment at the cost of the County (which shall be reimbursed by the County to the Foundation within 30 days of demand therefor) or to assume ownership of such abandoned equipment, and title to such equipment shall automatically pass to the Foundation by this Agreement as though by a bill of sale. The provisions of this Section 4 shall survive the expiration or termination of this Agreement.

5. Assignment. The license and rights granted in this Agreement are personal to the County and may not be assigned in any way to any other party. No estate is granted by this Agreement and no interest runs with the land. The Foundation and any successor and/or assign may assign this Agreement to any successor owner of the Tract.

6. Utilities. The County shall timely pay for the electricity or other utilities it consumes at the Property, including in the operation of the County Equipment, and shall install separate utility meters at its expense to account for such use. The Foundation shall have no liability to the County for any interruption in utilities or services to be provided to the Property. The Foundation intends to install an emergency gasoline, butane, diesel or other fuel-powered or renewable energy generator(s) on the Property to provide emergency power for non-exclusive use by the County, and the County agrees to maintain the generator during any period that the County maintains County Equipment at the Property in compliance with all applicable safety and environmental laws and regulations.

7. Insurance. The County shall carry during the term of this Agreement the following insurance: (i) "All Risk" property insurance which insures the County Equipment and all permitted alterations made by the County in amounts as the County shall deem prudent; and (ii) commercial 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 two million dollars (\$2,000,000) in the aggregate. The County will provide a certificate of insurance upon request of the Foundation to confirm the foregoing coverage. The County further agrees to waive any claims or damages or losses, including any deductibles and self-insured amounts, which are caused by or result from (a) any occurrence insured under any property insurance policy carried by the County, or (b) any occurrence which would have been covered under any property insurance required to be obtained and maintained by the County under this Agreement had such insurance been obtained and maintained as required. It is understood and agreed that use of the Property by the County is at its own risk, and the County hereby releases the Foundation from any and all liability arising out of damage to the County Equipment or any accident or injury to any person that might occur during the course of the County's use of the Property except to the extent caused by the intentional misconduct of the Foundation or its employees or agents.

8. Indemnification. In exchange for the Foundation granting access to and use of the Property as set forth herein, the County agrees to indemnify, defend, and hold harmless the Foundation and any and all owners, officers, directors, trustees, employees, affiliates, or agents of the Foundation from and against any claims, actions, causes, causes of action, liabilities, sums of money, costs, expenses, controversies, obligations, fees (including, without limitation attorneys' fees), damages, judgments, demands and suits, whether in law, equity or statutory, or administrative, arbitration or other proceedings, related to, arising from, or incurred in connection with the entry onto or use of the Property by the County or any agent, employee, or contractor of the County or other party that the County allows to enter upon or use the Property in its name.

9. Limitation of Liability. Notwithstanding anything contained in this Agreement to the contrary, the obligations of the Foundation under this Agreement do not constitute personal obligations of the individual trustees, officers, employers, affiliates, or agents of the Foundation, and the County shall not seek recourse against the individual trustees, officers, employers, affiliates, or agents of the Foundation or any other persons or entities having any interest in the Foundation for satisfaction of any liability with respect to this Agreement. In addition, in consideration of the benefits accruing hereunder to the County and notwithstanding anything contained in this Agreement to the contrary, the County hereby covenants and agrees for itself and all of its successors and assigns that the liability of the Foundation for its obligations under

this Agreement shall be limited solely to, and the County's and its successors' and assigns' sole and exclusive remedy shall be against, the Foundation's interest in the Property and no other assets of the Foundation. The term "Foundation" as used in this Agreement, so far as covenants or obligations on the part of the Foundation are concerned, shall be limited to mean and include only the owner or owners, at the time in question, of the fee title to the Property. In the event of any transfer or conveyance of any such title or interest (other than a transfer for security purposes only), the transferor shall be automatically relieved of all covenants and obligations on the part of the Foundation contained in this Agreement, and the term "Foundation" shall be deemed to mean such transferor.

10. Miscellaneous Provisions.

- a. Non-Discrimination: The parties shall comply with all applicable state and federal statutes and regulations governing Equal Employment Opportunity, Non-Discrimination, and Immigration.
- b. Conflict of Interest: This Contract is subject to cancellation pursuant to the provisions of A.R.S. § 38-511 regarding Conflict of Interest.
- c. Subordination: The County accepts this Agreement subject and subordinate to any mortgage(s), deed(s) of trust, ground lease(s) or other lien(s) now or subsequently arising upon the Tract, the Access Road, or the Property, and to renewals, modifications, refinancings and extensions thereof (collectively referred to as a "Mortgage"). This clause shall be self-operative, but no later than ten (10) business days after written request from the Foundation, or any holder of a Mortgage, the County shall execute a commercially reasonable subordination agreement, provided that such agreement will also provide that the County's use and occupancy of the Property and Access Road will not be disturbed for so long as the County is not in default hereunder beyond any applicable notice and cure period. In addition, the County shall, without charge, attorn to any successor to the Foundation's interest in this Agreement.
- d. Public Records Law: The parties understand that Cochise County is a public entity and, as such, is subject to Arizona's public records law, A.R.S. § 39-121 et. seq.
- e. 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.
- f. Notices: All notices, requests, demands, and other communications hereunder shall be in writing and shall be personally delivered or sent by a nationally recognized overnight courier and shall be deemed received upon the date of delivery to the address of the person to receive such notice or refusal of such delivery. Notices may be sent by e-mail and shall be deemed delivered on the day the e-mail is sent, if received prior to 5:00 pm Central Time, provided that a confirming copy of the notice is sent by personal delivery or deposited with



**EXHIBIT A**  
**Detailed Site Plan**

*[attached]*



**EXHIBIT B**

**Site Survey**

*[attached]*

