

AGREEMENT

between
Cochise County
and

State of Arizona (by and through) the Arizona State Forester

This Agreement (Agreement) is entered into this ___ day of _____, 2016, between the State of Arizona, the Arizona State Forester, hereinafter referred to as “State Forester” or “Lessee,” and Cochise County, hereinafter referred to as the “County” or “Lessor.”

WHEREAS the State Forester may enter into agreements to lease land pursuant to A.R.S. § 37-622(A), and

WHEREAS the State Forester has need of a property in the Bisbee/Douglas area for the purposes of a crew coordinator office and training facility, and

WHEREAS the County has space at its Bisbee-Douglas International Airport that could be used by the State Forester for the above stated purposes, and

WHEREAS this Agreement will authorize the State Forester’s occupancy of the Subject Property described below for the continuous and sole use for the above stated purposes.

NOW THEREFORE, in consideration of the mutual promises and covenants as more particularly set forth below, by accepting this Agreement, the parties hereby agree to abide by the following terms and conditions:

1. **Location of Subject Property.** The Subject Property to be included in this Agreement is situated on County property at Bisbee-Douglas International Airport, in Cochise County, Arizona, in Building #1, consisting of approximately 1,224 square feet of open space (formerly known as Café X) described in Exhibit “A” attached hereto (the “Parcel”). In addition, the State Forester has shared access to restroom facilities, breakroom facilities and parking spaces.
2. **Term of Agreement.** The term of this Agreement will be for a period of five (5) years, commencing on February 1, 2016 and terminating on January 31, 2021. This Lease shall be automatically renewed for four (4) additional five year terms, on the same terms and conditions, unless either of the parties notifies the other in writing of its intent not to renew the Lease at least six months prior to the Expiration Date.
3. **Rental Rate.** The annual rental payment of the leasehold premises shall be six thousand dollars (\$6,000.00) per year. The first annual rental payment shall be due and payable upon execution of this Agreement and each subsequent annual rental payment due and payable each year thereafter on the first day of February or as mutually agreed upon in writing. Following the completion of each two-year lease period the rent will be adjusted for the next two-year period based upon either a property appraisal or the percentage of change in the Consumer Price Index during the expiring two-year period, whichever is higher. The Consumer Price Index shall mean the average for “all times” shown on the “United States City Average for all Urban Consumers” as promulgated by the Bureau of Labor Statistics of the United States Department of Labor, using the year 1982-84 as the base period of 100.

The Consumer Price Index adjusted monthly rental during each successive two-year period following the expiration of the proceeding two-year period shall be determined by the following calculation:

$$\text{Annual Rent} + \frac{(\text{I}-\text{B}) \times \text{Annual Rent}}{\text{B}} / 12$$

Definition:

- Index - the Consumer Price Index for “all items”.
- Annual Rent - the total of twelve monthly rental payments.
- Base Month - the first month of the expiring two-year term.
- B - the Index for the Base Month
- I - the Index for the calendar month which is two years after the Base Month.

Pending the determination of the adjusted monthly rental for each two-year renewal, the LESSEE shall continue to pay the rent at the rate of the prior period. If the adjusted rent is determined to be higher than the previous lease term, the LESSEE on the first day of the month immediately following shall pay to the LESSOR the increased amount for the number of installments that shall have elapsed from the commencement of the renewal term up to and including the first day of such month.

If at the time required for the determination of the adjusted rent the Index is no longer published or issued, the parties shall use such other index as is then generally recognized and accepted for similar determinations of purchasing power. If the parties are unable to agree on the selection of an index which would most accurately carry out the intent hereof, or if there is a dispute with respect to the computation of the adjusted rent, the parties agree to resolution as described in Section XXI of this Lease Agreement. In any event, the monthly rent for any renewal lease period shall not be less than that of the previous term.

4. **Reservations.** The County excepts and reserves from this Agreement all oils, gases, coals, ores, limestone, minerals, fossils and fertilizers of every name and description that may be found in or upon the Subject Property or any part thereof. The County further reserves the right to enter into any other land use agreements or leases, such as but not limited to utility rights-of-way, which would not be incompatible with the uses and occupancy as allowed in this Agreement.
5. **Access Reservation.** The County further reserves for any purpose the nonexclusive right to unrestricted ingress and egress to and from the Subject Property and for the use of portions of the property not designated for exclusive State Forester use.
6. **Improvements to Subject Property.**
 - a. **Lessee accepts premises AS-IS.** The State Forester shall receive prior written approval of the County before any proposed addition, improvement, or

construction work on the Subject Property. The State Forester shall obtain proper zoning and/or building permits from all governmental agencies having jurisdiction over the Subject Property prior to the commencement of construction and at no cost to the County unless other arrangements have been mutually agreed upon. All construction shall be in conformance with applicable building codes and/or ordinances.

- b. All facilities and/or improvements constructed upon the Subject Property shall be at the expense of the State Forester.
 - c. Ownership and title of structures, facilities and improvements placed upon the leasehold premises by the State Forester during the term of this lease, shall be vested in the County, and the County shall not be liable or responsible for payment of the cost or value of such structures, facilities and improvements. At the expiration or termination of this Agreement, the State Forester shall have the right, as directed by the County, to remove from the leasehold premises all items of personal property not permanently affixed to the real property.
 - d. No hazardous or regulated substances shall be stored, used or disposed of on the Subject Property. Remediation of releases of such hazardous or regulated substances as a result of actions by the Lessee or persons with whom the State Forester has a contractual relationship shall be the sole responsibility of the State Forester.
7. **Termination Clause.** In the event that the State Forester fails to comply fully with the obligations under this Agreement, the County shall notify the State Forester in writing that it is in default under the Agreement and describe the nature of any deficiencies. If, within sixty (60) days of receiving a notice of default, the State Forester fails to remedy such deficiencies, the County in its sole discretion may terminate this Agreement, and any and all of the County's obligations hereunder shall become terminated without prejudice to the right of the County to recover from the State Forester all damages and/or sums payable accrued up to and including the date of termination. A waiver by the County of any default on behalf of the State Forester or any extension of time granted to the State Forester to cure any default shall not constitute a waiver of the requirement that time is of the essence of this Agreement.
8. **Utilities.** All utilities including but not limited to electric, gas, water, sewer, and trash collection shall be in the name of and paid by the County. The State Forester will be responsible for internet and telephone service.
9. **Repairs of Subject Property.** The State Forester agrees, at its own expense, to keep and maintain the leased property and all improvements placed thereon, or used by the State Forester in good condition and repair, normal wear and tear excepted.
10. **Mechanics Liens.** The State Forester agrees to keep the Subject Property and structures and improvements thereon free and clear from any and all liens arising from work performed, materials furnished or obligations incurred by the State Forester. Upon completion of any approved construction activity, copies of signed lien waivers shall be supplied to the County by the State Forester.

11. **Inspections by the County.** Upon reasonable notice and without breaching the security of the State Forester, or unreasonably interfering with the State Forester's occupancy of, or access to the premises, the County shall have the right to enter the premises: (a) to inspect the Subject Property; (b) to supply any service provided to the State Forester hereunder; (c) to show the premises to prospective purchasers, lenders, investors or Sublessees of the premises; (d) to post notices of non-responsibility; (e) to alter, improve or repair the premises and any portion of the building; and (f) to erect scaffolding and other necessary structures where required by the work to be performed. The County shall give the State Forester not less than three days' notice of such entry.
12. **Termination for conflict of interest.** This Agreement may be terminated pursuant to A.R.S. § 38-511 for conflict of interest.
13. **Termination for non-availability of funds.** Every obligation of the Parties under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds for the continuance of this Agreement are not allocated or are not available, this Agreement shall terminate automatically on the date of expiration of funding. In the event of such termination, the Parties shall incur no further obligation or liability under this Agreement other than for payment of services rendered prior to the expiration of funding.
14. **Amendments.** This Agreement may be modified only by a written amendment signed by both parties.
15. **Arbitration.** To the extent required pursuant to A.R.S. § 12-1518, the Parties agree to use arbitration to resolve any dispute arising under this Agreement, with each Party to bear its own attorneys' fees and costs.
16. **Return of Subject Property to the County.** Upon vacating the Property, the State Forester shall leave the premises in good condition, allowing for ordinary and normal usage during occupancy, and to reimburse the County for any damage done to the Property caused by the State Forester's occupation, other than due to normal use. Nothing herein shall be deemed a waiver of any rights of the County to demand and obtain possession of the Property in accordance with the terms and conditions of this Agreement in the event of a violation of this Agreement.
17. **County's Interest in Subject Property.** If the County's interest or right to possession to the Property is terminated prior to the expiration of this lease, this Agreement is automatically terminated along with any and all of the County's liabilities or obligations hereunder, provided, however, that a voluntary sale or disposition of the leasehold premises by the County shall be subject to this Agreement and the provisions contained herein.
18. **State Nondiscrimination Orders.** In the event that it applies, the parties agree to comply with the Governor's Executive Order No. 2009-09, amending 75-5, entitled "Prohibition of Discrimination in State Contracts - NonDiscrimination in Employment by Government Contractors and Subcontractors". Said non-discrimination orders, by reference, are made a part of this Agreement.

19. **Invalidity of a Term.** The Parties agree that in the event any term of this Agreement should be held to be invalid by a court of competent jurisdiction, the invalidity of any such term shall in no way affect any other term of this Agreement.
20. **Addresses of the County and State Forester.** Any notices to or demand upon either party hereto by the other party pursuant to this Agreement shall be in writing and shall be delivered in person to the other party or forwarded by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

a. If intended for County, to:

Ruben Miranda
Administrator, Internal Services
Cochise County Facilities Department
1415 Melody Lane
Bisbee, Arizona 85603
(520) 432-9380

b. If intended for State Forester, to:

State Forester
Arizona State Forestry
1110 West Washington St., Suite 100
Phoenix, Arizona 85007

or to such other address as either party may from time to time furnish in writing to the other party by notice hereunder. Any notice so mailed shall be deemed to have been given as of the date such notice is received as shown on the return receipt.

21. **County's Right to Enforce.** Either party's failure to require strict performance of any term or condition of this Agreement shall not constitute a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to reject to it.
22. **Indemnification.** Each Party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other Party (as "indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.

[signatures on next page]

IN WITNESS WHEREOF, each person signing this Agreement warrants that he/she has the capacity, full power, and authority to execute this Agreement and consummate the transaction(s) contemplated hereby on behalf of the parties herein.

LESSOR:

LESSEE:

Cochise County

By: _____
Chairman, Board of Supervisors

By: _____
Arizona State Land Department

Date: _____

Date: _____

ATTEST:

By: _____
Clerk of the Board

Date: _____

APPROVED AS TO FORM:

By: _____
Cochise County's Attorneys Office

Date: _____

Exhibit A



