RESOLUTION NO. 2863

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A LEASE AGREEMENT BETWEEN THE TOWN OF PAYSON AND FARRELL ENTERPRISES L.L.C. FOR LEASE OF SPACE ON THE TOWN'S WATER TOWER LOCATED AT 902 NORTH HILLCREST DRIVE FOR THE PURPOSE OF ERECTING AN ANTENNA TO FACILITATE AREA COVERAGE OF KMOG AM/FM RADIO STATION.

WHEREAS, Farrell Enterprises L.L.C. ("Farrell") owns and operates KMOG AM/FM radio station which provides radio programming to the immediate Payson area; and

WHEREAS, Farrell desires to lease space on the Town of Payson's ("Town") water tower located at 902 North Hillcrest Drive for the purpose of erecting an antenna to facilitate coverage of its radio station broadcast; and

WHEREAS, the Town desires to lease such space to Farrell; and

WHEREAS, for such purpose, a Lease Agreement has been prepared.

NOW, THEREFORE, THE MAYOR AND COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY RESOLVE AS FOLLOWS:

Section 1. That the Lease Agreement between the Town of Payson and Farrell Enterprises L.L.C. attached hereto as Exhibit 1, is approved in substantially the form attached.

Section 2. That Kenny J. Evans, Mayor of the Town of Payson, is authorized to execute said Lease Agreement in substantially the form attached.

Section 3. That the Town of Payson is authorized to take such other and further actions as are necessary to carry out the intent of this Resolution.

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE TOWN OF PAYSON, ARIZONA, this 2nd day of July, 2015, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

_____
Kenny J. Evans, Mayor

ATTEST:

_____
Silvia Smith, Town Clerk

APPROVED AS TO FORM:

_____
Hector M. Figueroa, Town Attorney

Prepared by Town of Payson Legal Department
HMF:drs June 19, 2015 (9:50am)
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EXHIBIT 1

to Resolution No. 2863

LEASE AGREEMENT

This Lease Agreement ("**Lease**") made this ____ day of _____, 2015 ("**Lease Date**"), by and between the Town of Payson ("**Landlord**") and Farrell Enterprises L.L.C. ("**Tenant**"). The Landlord and Tenant are sometimes each referred to as a "**Party**" and collectively referred to herein as the "**Parties**."

RECITALS

A. Tenant is Farrell Enterprises L.L.C., a for-profit limited liability company that provides community focused radio broadcast programming to Payson and the surrounding area.

B. Landlord is the Town of Payson. Landlord desires to provide Tenant a lease for an antenna location to facilitate area coverage of its FM - 103.3 radio station broadcast. Landlord is authorized to contract for such space requirements.

C. To enable Tenant to establish broadcast access for its facilities, the Parties desire to enter into this Lease under the following terms and conditions.

AGREEMENTS

NOW, THEREFORE, in consideration of the terms and mutual promises herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. ***(a)*** Landlord leases to Tenant that certain real property (the "**Property**") located at 902 N. Hillcrest Drive and described in the attached Exhibit A, including all necessary easements for access and utilities as described in Exhibit B, to be used for the housing, installation and operation of licensed or unlicensed communications equipment, antenna structure or rooftop facility and for any other Permitted Use (defined herein) (the portion of the Property with the above-described easements, collectively referred to herein as the "**Site**"). Landlord acknowledges that Tenant will install on the Site structures and equipment, including without limitation, associated antennas, equipment shelters or cabinets, utilities, fencing and items necessary for the successful and secure use of the Site with Landlord's prior approval, such approval not to be unreasonably withheld, delayed, or conditioned, (collectively referred to herein as the "**Equipment**"). All Equipment shall be and remain Tenant's personal property and Landlord hereby acknowledges and agrees it will have no statutory landlord's lien or security interest therein.

2. **Term**.

(a) Initial Term; Renewal Term. Initial term of this Lease is ten (10) years, commencing on the Commencement Date (as defined in Section 5) (the "**Initial Term**"). This Lease shall automatically renew, on the same terms and conditions, for two (2) additional five year terms ("**Renewal Terms**"), unless either Party notifies the other Party, in writing, of the non-renewing Party's intention to not renew the Lease at least ninety (90) days prior to the expiration of the Initial or first Renewal Term.

(b) Early Termination. Notwithstanding anything to the contrary set forth in Section 2(a), this Lease may terminate early in any of the following events:

(i) Upon Tenant's default, as further provided in Section 18 of this Lease.

(ii) If Landlord gives notice to Tenant that permanent closure of the Property or the Site will occur and as a result, Landlord will (x) sell of Property; (y) lease the Property for a term in excess of one year; or (z) otherwise transfer the Property in such a manner to cause Tenant to lose authority over the Site; in an of such events the Lease may be terminated after the later of one hundred eighty (180) days of such notice or upon the closing of the sale, lease or other transfer of the Property.

(iii) By the appropriate Party, in accordance with Sections 4(b)(i)(B), 13, 20 or 24(b) or Exhibit A to this Lease.

3. **Rent.** The rent shall be comprised of the following (collectively, the "**Rent**"):

(a) Thirty six hundred dollars per year ($3,600.00), payable as of the Lease Date for the first year and on the anniversary date each year thereafter by Tenant to Landlord during the Initial Term and any applicable Renewal Term. Rent shall be increased to forty eight hundred dollars per year ($4,800.00) for each successive five year term.

4. **Notices.** All notices, consents and approvals pursuant to this Lease shall be in writing, sent by: (a) a reputable messenger or courier service; (b) a reputable private carrier of overnight mail; (c) postage prepaid, certified mail, return receipt requested; or (d) electronic confirmation of delivery and receipt facsimile or email provided. Such notice shall be effective on the earlier to occur of delivery to the stated address (or upon refusal to accept delivery), or when mailed by certified mail to Landlord or Tenant in each case addressed to Landlord or Tenant at the address designated below, upon the date of receipt or refusal Notices to the applicable parties shall be provided to the addresses provided below, or such other address as provided by one party to the others in conformity with this Section 4:

If to Landlord: Town of Payson
Attn: Town Manager
303 North Beeline Highway
Payson, AZ 85541
Fax: 928-474-4610
Email: lgarrett@paysonaz.gov

If to Tenant: Name Farrell Enterprises L.L.C.
Address 500 E. Tyler Parkway
City, State & Zip Payson, Arizona
Attn: Michael E. Farrell
Fax: (928) 474-0236
Email: traffic@1420kmog.com Attn: Mike Farrell

5. **Construction and Commencement**. Tenant shall notify Landlord at least five (5) days prior to the date upon which Tenant intends to commence any construction or installation at the Site. Such notice shall include a construction schedule, so as to provide Landlord with an opportunity to be present during any such installation or construction. In addition to the foregoing, Tenant shall notify Landlord of the actual date of Tenant's commencement of its initial installation or construction at the Site (the "**Commencement Date**") no more than five (5) days following such commencement, by providing Landlord a completed Commencement Date Memorandum attached hereto as Exhibit C which Commencement Date Memorandum will reflect the Commencement Date of the Lease. Prior to the Commencement Date, Landlord agrees to cooperate with Tenant, at Tenant's expense, in obtaining: (a) all licenses and permits or authorizations required for Tenant's use at the Site from all applicable government and/or regulatory entities (including, without limitation, zoning and land use authorities, and the Federal Communications Commission ("**FCC**"); and (b) a title report, zoning approvals and variances, and land use permits. Further, Landlord expressly grants Tenant the right of access to the Site commencing on and after the Lease Date, to perform any surveys, soil tests, and other engineering procedures or environmental investigations on the Site deemed necessary and appropriate by Tenant to evaluate the suitability of the Site for the Permitted Uses. Tenant's consummation of this Lease is conditioned on Tenant's satisfaction as to the outcome of such testing, surveying and title review. Tenant must use a magnetic mount approved by Landlord for the installation of antenna(s) on the tank rooftop. Typical antenna installation is depicted in Exhibit D (antenna type may vary).

6. **Access**. Tenant shall have the right of access to the equipment on Site, twenty-four (24) hours per day, seven (7) days per week, including one set of keys and/or codes to obtain such access if necessary. Installation will be a rooftop antenna installation, Tenant will work with Landlord to establish access procedures. Tenant shall be responsible for ensuring that: (a) Landlord has at all times, a complete and accurate written list of all employees and agents of Tenant who have been provided access to the Site; and (b) for each person granted access, Tenant completed a fingerprint and criminal background check and issued a numbered credential to be worn at all times while such person is on the Site. Should Landlord identify to Tenant any person under Tenant's control that should be removed from the Site for reasons of safety or protection of persons or property at or about the Site, Tenant shall upon such notice from Landlord, immediately cause such person's removal and take reasonable steps to prevent such person's subsequent access to the Site. In the event that any keys to property of the Landlord are issued to Tenant or any of its employees, contractors or agents, if such keys are lost, Tenant shall be responsible for and shall pay the cost of re-keying Landlord's locks which could be opened by the lost keys. Tenant shall have access to the water storage tank and must use approved tank ladder climbing safety gear when accessing Tenant's equipment. Landlord

retains the right to refuse access to the site or the water tank by representative(s) of Tenant based upon written direction by the Payson Police Department.

7. **Permitted Use**. Tenant may use the Site as follows: (a) upon the full execution and delivery of the Lease, Tenant and its contractors, subcontractors, and agents, with Landlord's coordination, may undertake entitlement activities (testing, permitting, and title review) in anticipation of the construction and installation of communications equipment or rooftop facility; (b) on and after the Lease Date, Tenant and its employees, agents, contractors and subcontractors will be entitled to undertake the installation, construction; (c) on and after the Commencement Date, Tenant and its employees, agents, contractors and subcontractors will be entitled to undertake the maintenance, operation, repair, replacement and upgrade of the Equipment, including the addition to, modification of and/or replacement of any part of the Equipment as it deems to be reasonably necessary, and in particular, to be in compliance with any current or future federal, state or local mandated application, at no additional cost to Landlord.

8. **Ancillary Installations; Modifications**. Tenant shall have the right to install and operate transmission cables from the equipment shelter or cabinet to the antennas, electric lines from the main feed to the equipment shelter or cabinet and communication lines from the main entry point to the equipment shelter or cabinet, over, across or under Landlord's adjacent property. Tenant shall also have the right to make Site improvements, alterations, upgrades or additions appropriate for Tenant's use ("**Tenant Changes**"). Tenant Changes includes the right to undertake such appropriate means to secure the Site conducted with Landlord's approval, such approval not to be unreasonably withheld, delayed, or conditioned. Tenant agrees to comply with all applicable governmental laws, rules, statutes and regulations, relating to its use of the Site. Tenant, shall have the right to modify, supplement, replace, upgrade, expand the Equipment, at any time during the term of this Lease if approved by Landlord. Tenant, will be allowed to make such alterations to the Site in order to accomplish Tenant's Changes or to ensure that Tenant's Equipment complies with all applicable federal, state or local laws, rules or regulations. Tenant and its subcontractors shall, keep and maintain, at their expense, the Site and its Equipment in a commercially reasonable condition and repair during the Initial Term and any Renewal Term in a manner which will not disturb Landlord's reasonable use of the adjacent premises. All improvements, ancillary installations and modifications described in this Section 8 shall be subject to Landlord's prior approval, such approval not to be unreasonably withheld, delayed, or conditioned, Tenant shall obtain at its expense all necessary building permits and such other authorizations for any improvements, ancillary installations and modifications it installs at the Site.

9. **Removal of Equipment, Landlord Option**. Upon expiration or termination of the Lease, or upon cessation of use and maintenance of the Site by Landlord such that use of the Site is no longer compatible with the terms of this Lease, whichever is sooner, the Landlord shall have the option of (1) requiring the Tenant to surrender possession and ownership of all Equipment, including any antenna, tower or dish antenna (but not including any personal property of the Tenant) to the Landlord or (2) require Tenant to: (a) remove the Equipment, including any antenna, tower or dish antenna and Tenant's personal property from the Site, at Tenant's sole risk, cost, and expense; (b) deliver the Site in substantially the same condition as received (ordinary wear and tear excepted); and (c) repair any damage caused by such removal.

10. **Maintenance of Facilities and Utilities.** Tenant shall be responsible for the maintenance, repair and replacement of and damage to any Equipment owned by tenant, located on the Site, at Tenant's sole cost. Landlord shall be responsible for the maintenance, repair and replacement of Landlord's facilities adjacent to the Site, at Landlord's sole cost, and without reimbursement by Tenant, including those areas shared in common with Tenant. Notwithstanding the foregoing, the cost and expenses associated with any damage which is directly attributable to the acts or omissions of a Party or that Party's, employees, contractors or invitees shall be borne solely by that Party, provided that neither party shall be responsible to the other party for damage, if any, inflicted by employees of the Landlord, except in the event that such damage is due to the negligence of that Party.

11. **RF Interference**.

(a) In no event shall Tenant's use of the Site or operation of any of its Equipment thereon be conducted in a manner that interferes with the site's existing radio frequencies, Landlord's police or fire emergency communications, or with equipment normally used by Landlord as disclosed to Tenant. Notwithstanding anything to the contrary herein, Tenant shall not illegally transmit on any frequency or operate at variance from the specifications in its FCC license or the FCC's rules governing Tenant's operation of its Equipment.

(b) Any interference caused in violation of subsection (a) above shall be deemed a material breach of this Agreement. In the event such interferences creates an actual public safety concern, Landlord shall provide Tenant with notice of such interference and Tenant shall have twelve (12) hours after receipt of such notice to eliminate such interference. If Tenant fails to correct such interference within twelve hours, Tenant shall cease operating such equipment causing such interference until the condition causing the interference is remedied to Landlord's satisfaction.

12. **Casualty and Condemnation**. In the event that the Site is wholly condemned, whether by eminent domain or otherwise, this Lease shall terminate without further liability to either Party except for payment of any amounts due under this Lease up to the time of such condemnation. If the Site is wholly or partially destroyed or partially condemned, then within one hundred and twenty (120) days (which shall be extended for any delays directly caused by governmental action or inaction) Landlord shall repair (or relocate, if wholly destroyed) the Site except for Tenant's Equipment, including any tower. In the event that the repair or reconstruction has not commenced within one hundred eighty (180) days following such casualty, Tenant may terminate this Lease upon written notice to Landlord prior to the commencement of any such repair or reconstruction of the Site. If, however, any such partial destruction or condemnation occurs within six (6) months prior to termination of the last Renewal Term of this Lease, then either Party may terminate this Lease without further liability except for payment of the amounts due up to the time of such destruction or condemnation. Any amounts prepaid by Tenant shall be returned as part of the operation of this Section 12. In the event of condemnation, whether partial or total, Tenant shall be entitled to seek and obtain an award from the condemning authority for its loss, independent from that of Landlord.

13. **Compliance with Laws**. Tenant is responsible for ensuring that the Equipment, including any antenna or tower structure at the Site is operated in compliance with all governmental lighting and marking requirements. Tenant shall indemnify and defend Landlord

from and against any loss, cost, or expense sustained or incurred by Landlord as a result of Tenant's failure to comply with duly issued governmental regulations relating to tower lighting and marking. Tenant shall at all times comply with all applicable laws, ordinances, rules and regulations of municipal, state and federal governmental authorities relating to the installation, maintenance, location, use, operation, and removal of the Equipment and other alterations or improvements authorized pursuant to the provisions of this Lease.

14. **Indemnification and Insurance**. To the fullest extent permitted by law, each Party shall indemnify, defend and hold harmless the other Party, its respective Affiliates (defined below), and their respective directors, managers, employees, officers, shareholders, members, successors and assigns against all claims, losses, costs, expenses, damages, and liabilities (except as otherwise provided in these terms and conditions) arising from: (a) the negligence, willful misconduct or strict liability of such Party, its agents, employees, representatives and contractors; (b) any material breach by such Party of any provision of this Lease; or (c) existence of, migration to or release of any Hazardous Substances into the environment that relate to or arise from the inseminator's activities on the Site or from the adjoining property. In addition to the foregoing, Tenant shall indemnify Landlord for all costs and expenses associated with actions taken by Landlord to resolve any interference caused by Tenant or Tenant's Equipment. Neither Party shall be responsible nor liable to the other for any damage arising from any claim to the extent attributable to any acts or omissions of other parties located at the Site. Without limiting the foregoing in any way, Tenant, at its sole cost and expense, agrees to maintain commercial general liability and casualty insurance of no less than One Million Dollars ($1,000,000.00) for each occurrence and Two Million Dollars ($2,000,000.00) in aggregate with respect to its property and obligations hereunder. Such insurance policies shall contain a provision that such policy shall not be canceled or amended without thirty (30) days' notice to the Landlord. Upon the execution of this Lease, Tenant shall deliver to Landlord a certificate evidencing such insurance coverage, on which Landlord shall be named as an additional insured with respect to the Site. Further, Tenant shall deliver to Landlord a certificate evidencing such insurance coverage within thirty (30) days of each renewal of such policy. Landlord reserves the right, from time to time, to increase the required liability limits described above in accordance with then-current customary insurance requirements in the tower industry nationally.

15. **WAIVER OF CERTAIN DAMAGES**. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS LEASE, EACH PARTY HEREBY WAIVES THE RIGHT TO RECOVER INCIDENTAL, CONSEQUENTIAL (INCLUDING LOST PROFITS), PUNITIVE, EXEMPLARY AND SIMILAR DAMAGES AND THE MULTIPLIED PORTION OF ANY DAMAGES EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE.

16. **Assignment and Subleasing**. Tenant may assign this Lease as a whole with Landlord's prior written consent, which consent will not be unreasonably withheld, delayed or conditioned; provided, however, that Landlord's consent will not be required for an assignment to any person or entity which is controlled by, controlling or under common control with Tenant ("**Affiliates**"). For these purposes, "**control**" means ownership, directly or indirectly, of 50% or more of the voting stock, equity or beneficial interest or a general partner of any partnership. Tenant may sublet, sublease, or permit the use of the Site by any other party, upon written notice to Landlord. Tenant may diplex or combine signals or grant any shared use rights for itself or

others without notice to Landlord. In the event of a permitted assignment hereunder, Tenant shall be relieved of any of its obligations under this Lease arising on or after the effective date of such permitted assignment. Any permitted assignee shall expressly assume, and become bound by, all of Tenant's obligations under this Lease. Landlord may freely assign, transfer, or sublease this Lease and, in such event, Landlord shall be relieved of all of its obligations under this Lease from and after the date of such assignment, transfer, or sublease.

17. **Quiet Enjoyment**. Landlord covenants and agrees that, upon Tenant's paying any amounts due and observing and performing all of the terms, covenants and conditions to be observed and performed by Tenant under this Lease, Tenant shall be entitled to quiet enjoyment of the Site during the term of this Lease.

18. **Default**. Except as otherwise specifically provided in this Lease, either Party shall have twenty (20) days after written notice from the other Party to cure any monetary default and thirty (30) days after written notice from the other Party to cure any non-monetary default. So long as the Party charged with the default diligently pursues a cure during the prescribed time period, that Party shall be given additional time reasonably necessary to cure the default. If subsequent to the foregoing requisite periods of time, there continues to be an event of default, the non-defaulting Party may terminate this Lease, pursue such claim for damages or injunctive relief as it determines to be available in its sole discretion, upon written notice to the defaulting Party as provided herein. For any default to be effective as against Tenant Landlord shall give concurrent notice to NTIA (defined below) and NTIA or its designee, shall have the right to cure or render such other performance directly to Landlord, on behalf of Tenant.

19. **Governmental Approvals and Permits**. In the event that any governmental permit, approval or authorization required for Tenant's use of, operation of, or right to lease space from Landlord at the Site is challenged, terminated or withdrawn by any governmental authority or third party as part of any governmental, regulatory, or legal proceeding, Landlord may terminate this Lease, but only after notice to Tenant of such governmental challenge, termination or withdrawal, and in such event, only after affording Tenant an opportunity to appeal or contest the same, such termination being effective only after Tenant has exhausted such remedies as may be available. During the Tenant's exercise of such rights in the preceding sentence or in event that Landlord does not choose to terminate this Lease, Tenant may elect to install or continue to operate its equipment at its sole cost and risk. Tenant understands and agrees that, in the event of a governmental or legal order requiring the removal of Tenant's Equipment from the Site or removal of the tower structure or any structural modification required to accommodate Tenant's Equipment, Tenant shall do so promptly at its sole cost and expense. Landlord shall cooperate with Tenant in Tenant's efforts to contest or appeal any such adverse governmental action and obtain any permits or other approvals that may be necessary for Tenant's installation and operation of the Equipment; provided, however such cooperation shall be subject to the foregoing: (a) Landlord shall not be required to expend any funds or undertake any liability or obligation in connection with such cooperation; (b) Landlord reserves the right to obtain such required approvals or permits on Tenant's behalf, at Tenant's sole cost and expense; and (c) in no event may Tenant encourage, suggest, participate in or permit the imposition of any restrictions or additional obligations whatsoever on the Site as part of or in exchange for obtaining any such approval or permit. In the event that Tenant's shelter or cabinets are installed above a third party or Landlord-owned shelter or building, Tenant shall be solely responsible for

obtaining any required consents or permits in connection with such shelter or cabinet installation. Further, Tenant will comply with any applicable roof inspection protocol adopted by the Landlord in accordance with ARS § 15-342.01.

20. **Warranties and Covenants**.

(a) Landlord's Warranties to Tenant. Landlord warrants and represents, as follows:

(i) Landlord is duly organized, validly existing and in good standing and has the right, power and authority to enter into this Lease and bind itself hereto through the Party set forth as signatory for the Party below;

(ii) Landlord solely owns the Site in fee simple, or controls the Site by lease which extends beyond the Initial Term and each Renewal Terms;

(iii) Except as otherwise disclosed in writing by Landlord as of the Lease Date, the Site is not encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Tenant's Permitted Use and enjoyment of the Site under this Lease;

(iv) Landlord's execution and performance of this Lease will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on the Landlord;

(v) If the Site is or becomes encumbered by a deed to secure a debt, mortgage or other security interest, Landlord will use best efforts to provide promptly to Tenant a mutually agreeable Subordination, Non-Disturbance and Attornment Agreement; and

(vi) To the best of Landlord's knowledge, the Site is free of hazardous substances as of the date of this Agreement and the Site has never been subject to any contamination or hazardous conditions resulting in any environmental investigation, inquiry or remediation.

(b) Tenant's Warranties to Landlord. Tenant warrants and represents, as follows:

(i) Tenant is duly organized, validly existing and in good standing and has the right, power and authority to enter into this Lease and bind itself hereto through the Party set forth as signatory for the Party below; and

(ii) Tenant's execution and performance of this Lease will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on the Tenant.

(c) Environmental Covenant. Landlord and Tenant agree that each will be responsible for its compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene condition or other matters as may now or at any time hereafter be in effect, that are now or were related to that Party's activity conducted in or on the Site.

21. **Governing Law.** This Lease shall be governed by the internal laws of Arizona, with the exception of its choice of law provisions.

22. **Dispute Resolution.**

22.1 With the written consent of the Parties, any dispute, controversy, claim, or cause of action arising out of or related to this Lease may be settled by submission to binding arbitration in accordance with the rules of the American Arbitration Association and the Arizona Uniform Arbitration Act, A.R.S. § 12-1501, et seq. Judgment upon any award rendered by the arbitrator(s), if filed in Arizona Superior Court, shall be filed in the Superior Court of Gila County, Arizona.

22.2 The venue for any dispute shall be Gila County, Arizona. Both Parties consent in advance to such venue and jurisdiction and waive any right to object that Gila County is an inconvenient or improper forum.

22.3 Neither Party shall be entitled to recover from the other party any of its attorneys' fees, costs, or expert witness fees incurred in any such dispute, controversy, claim, or cause of action. Each party shall bear its own attorneys' fees without contribution from the other party.

23. **Excusable Delays**. If either Party is unable due to causes beyond its reasonable control to carry out its obligations under this Lease in whole or in part and if such Party gives written notice and full details of an excusable delay (including, without limitation, a force majeure event) to the other as soon as practicable after the occurrence of the event, then the obligations of the affected Party will be suspended to the extent reasonably required as a result of such event. Excusable Delay means an event that is not within the reasonable control of the affected Party, including, without limitation, war, riots, civil insurrection or acts of a common enemy, fire, flood, strikes or other labor difficulty, and acts of civil or military authority, including governmental laws, orders, actions, inactions, regulations or embargo.

24. **State-Mandated Provisions**.

(a) Nondiscrimination and Immigration Compliance. Tenant shall not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, or sex, either directly, indirectly or through contractual or other arrangements. To the extent this Lease is subject to Arizona Executive Orders 2009-09 (prohibiting discrimination in employment) and 2005-30 (regarding compliance with Federal immigration laws), or A.R.S. § 41-4401, the terms of which are hereby incorporated into this Agreement as though fully set forth by this

reference, with the obligations of the "Contractor" or "State Contractor" as set forth therein respectively applying to Tenant. To the extent Arizona Executive Order 2005-30, or A.R.S. § 41-4401(A)(3) are applicable to this Lease, the Landlord shall have the right to inspect the papers of any U.S. employee of the Tenant or their subsidiaries or subcontractors to ensure compliance with all warranties required by the Executive Order and statute.

(b) Records. Pursuant to A.R.S. §§ 35-214 and 35-215, Tenant shall retain all books, accounts, reports, files and other records relating to the acquisitions and performance of this Lease for a period of five (5) years after the completion of the contract. All such documents shall be subject to inspection and audit at reasonable times. Upon request, a legible copy of any or all such documents shall be produced at the offices of the Landlord.

(c) Cancellation for Conflict of Interest. In accordance with A.R.S. § 38-511(F), notice is hereby given that this Lease may be canceled by Landlord for conflict of interest in accordance with A.R.S. §38-511, within three (3) years after its execution, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Lease on behalf of Landlord is, at any time while the Initial Term or any Renewal Term is in effect, an employee or agent of Tenant in any capacity or a consultant to Tenant with respect to the subject matter of this Lease.

25. **Miscellaneous**.

(a) Time. Time is of the essence in the performance of all obligations set forth in this Lease.

(b) Severability. If any term or condition of this Lease is found unenforceable, the remaining terms and conditions will remain binding upon the Parties as though said unenforceable provision were not contained herein.

(c) Recording. Upon the request of Tenant, Landlord shall execute, acknowledge and deliver to the Tenant a short form memorandum of this Lease for recording purposes, which Tenant may record at its discretion and expense.

(d) Amendment and Waiver. This Lease cannot be amended, modified or revised unless done in writing and signed by an authorized agent of the Landlord and an authorized agent of the Tenant. No provision may be waived except in a writing signed by both Parties.

(e) Runs with the Land. The terms and conditions contained in this Lease will run with the Site and bind and inure to the benefit of the Parties, their respective heirs, executors, administrators, successors and assigns. This Lease shall be binding upon the successors and permitted assigns of both Parties. Tenant may obtain an estoppel certificate, non-disturbance agreement, subordination agreement or other similar agreement from Landlord within twenty (20) days of Tenant's written request.

(f) Counterparts. This Lease may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, and each of the executed counterparts shall be deemed an original hereof. Such counterparts may be exchanged via facsimile transmission, provided that immediately following such transmission, each Party shall forward an executed original copy of the counterpart to the other Party by personal delivery or overnight courier.

(g) Entire Agreement. The Lease, with these Terms and Conditions and the Exhibits attached hereto all being a part hereof, constitute the entire agreement of the Parties hereto with respect to the Site and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Lease.

(h) Interpretation. Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term "**including**" will be interpreted to mean "including but not limited to"; (iii) whenever a Party's consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) where applicable, the term "**and**" includes the conjunctive and the disjunctive, the singular includes the plural (and vice versa) and the masculine includes the feminine, or the neuter use of the terms; and (v) reference to a default will take into consideration any applicable notice, grace and cure periods.

(i) Recitals and Exhibits. The above-stated Recitals and the attached Exhibits are incorporated herein by this reference. The Parties understand and acknowledge that Exhibit A may be attached to this Lease in preliminary form. Accordingly, the Parties hereby agree that Tenant shall have the right to replace such preliminary Exhibit A with a more complete exhibit without further amendment; provided that such replaced Exhibit A is sent to Landlord in accordance with the Notice provisions herein within five (5) business days of such replacement.

IN WITNESS WHEREOF, the Parties, each in consideration of the mutual covenants contained herein, and for other good and valuable consideration, intending to be legally bound, have caused this Lease to be executed by their duly authorized representatives as of the Lease Date.

Landlord: Town of Payson

By:

_____

Name: Kenny J. Evans
Its: Mayor

Tenant: Farrell Enterprises L.L.C., an Arizona limited liability company

By: Farrell Family Trust U/A/D, its Manager

By:_____
Michael E. Farrell, Trustee

By:_____
Debra L. Farrell, Trustee

ATTEST:

_____
Silvia Smith, Payson Town Clerk

APPROVAL AS TO FORM

By_____ _____
Hector M. Figueroa, Town Attorney Dated

STATE OF ARIZONA)
) ss
County of Gila)

On this _____ day of _____, 2015, before me, appeared Michael E. Farrell, Trustee of Farrell Family Trust U/A/D, Manager of Farrell Enterprises L.L.C., personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the Lease Agreement and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the entity upon behalf of which he acted executed the instrument.

WITNESS my hand and official seal

_____ _____
My Commission Expires Notary Public

STATE OF ARIZONA)
) ss
County of Gila)

On this _____ day of _____, 2015, before me, appeared Michael E. Farrell, Trustee of Farrell Family Trust U/A/D, Manager of Farrell Enterprises L.L.C., personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the Lease Agreement and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the entity upon behalf of which he acted executed the instrument.

WITNESS my hand and official seal

_____ _____
My Commission Expires Notary Public

STATE OF ARIZONA)
) ss
County of Gila)

On this _____ day of _____, 2015, before me, appeared Debra L. Farrell, Trustee of Farrell Family Trust U/A/D, Manager of Farrell Enterprises L.L.C., personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the Lease Agreement and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the entity upon behalf of which she acted executed the instrument.

WITNESS my hand and official seal

_____ _____
My Commission Expires Notary Public

Exhibit A

Location of Site and Equipment

Hillcrest Water Tank Site: 902 N Hillcrest Dr, Payson, AZ 85541

The Site and Equipment Location:
The location and description of the leased site and Equipement within the Property (together with access and utilities) is as follows:

Leased Area (Approximate)
25 sq. ft.

Exhibit B

Location of Easement to Access Tenant Equipment

Easements, including access over under or across the Property to and from the Tenant lease site:

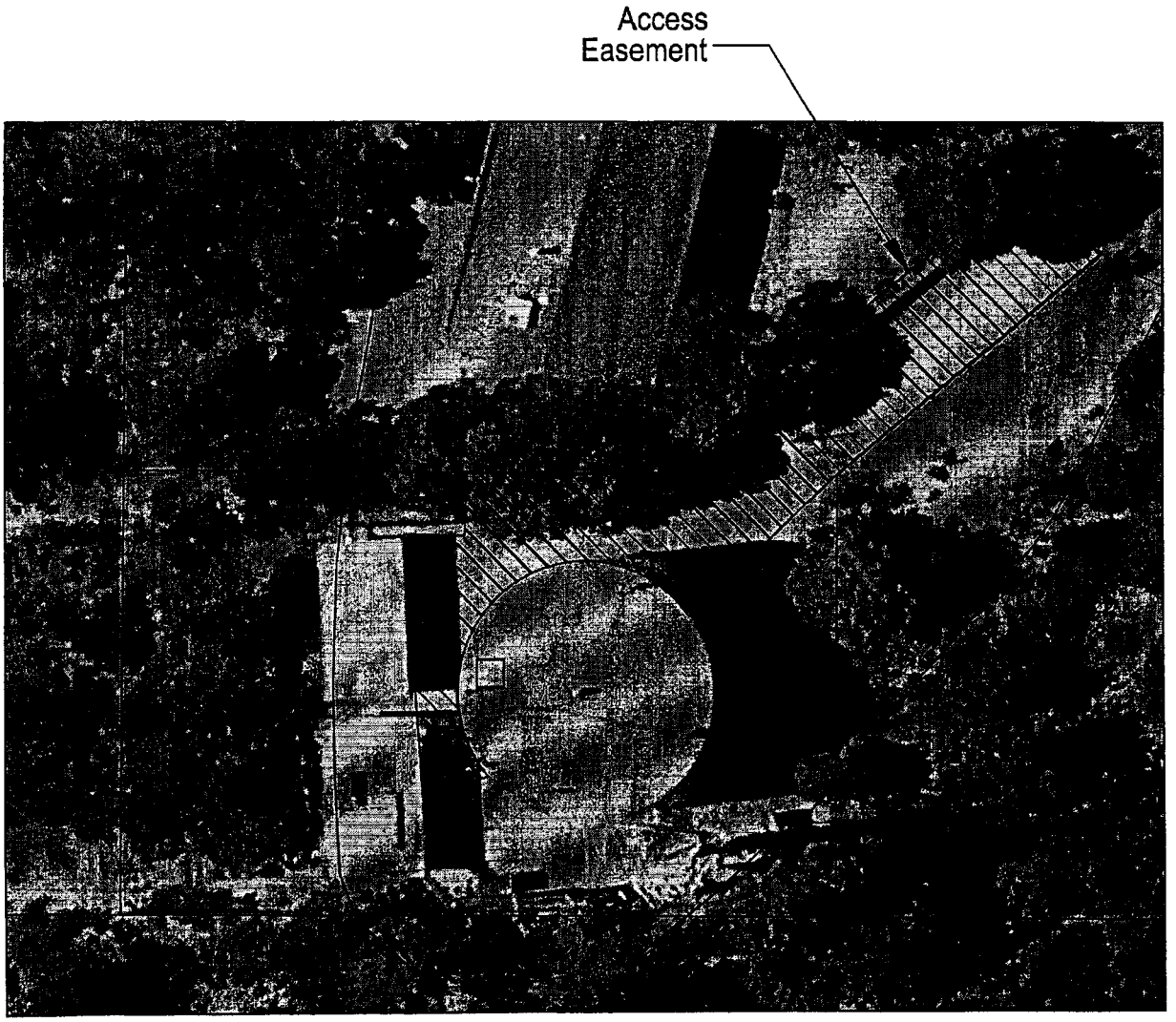


Exhibit C

Form of Commencement Date Memorandum

COMMENCEMENT DATE MEMORANDUM

This Commencement Date Memorandum is made and entered into this ___ day of _____, 2015, by and between the Town of Payson ("**Landlord**") and Farrell Enterprises L.L.C. ("**Tenant**").

WHEREAS, Landlord and Tenant entered into that certain Lease Agreement dated _____, 2015, (hereinafter referred to as the "**Lease**"); and

WHEREAS, Section 5 of the Lease provides that the "Commencement Date" commences on the Tenant's commencement of any installation or construction at the Site; and

WHEREAS, Tenant commenced construction on the ____ day of _____, 2015.

NOW, THEREFORE, pursuant to the provisions of Section 5 of the Lease, Landlord and Tenant mutually agree as follows:

1. Tenant is in possession of, and has accepted, the Site set forth in the Lease.

2. The Initial Term of the Lease shall begin on _____ and will 10 years from the the Commencement Date, as provided in Section 2 of the Lease.

3. Capitalized terms used but not defined herein are defined in the Lease.

IN WITNESS WHEREOF, the Parties hereto have signed and sealed this Agreement the _____day of _____, 2015.

Landlord: Town of Payson

By: _____
Name: Kenny J. Evans
Its: Mayor

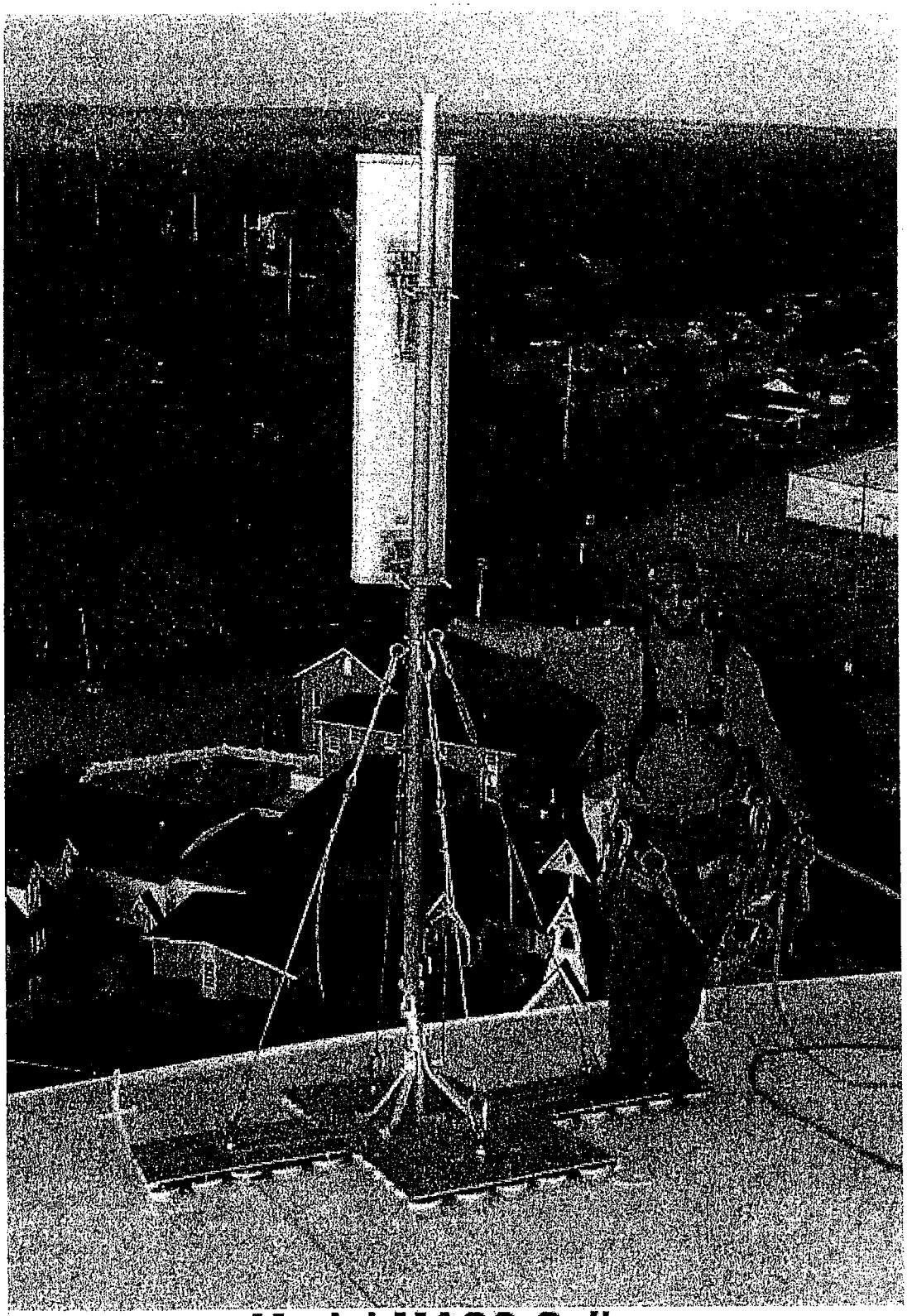
Tenant: Farrell Enterprises L.L.C., an Arizona limited liability company

By: Farrell Family Trust U/A/D, its Manager

By: _____
Michael E. Farrell, Trustee

By:_____
Debra L. Farrell, Trustee

Exhibit D



Model MASS Cell

(Antenna type may vary)