

## FACILITIES MODIFICATION AGREEMENT

This Agreement is made and entered into this 27<sup>th</sup> day of March, 2008, between Chisholm Trail Broadcasting Co., licensee of Station KNID(FM), Alva, Oklahoma ("**Chisholm Trail**"), and Hightower Radio, Inc., licensee of Station KMOO-FM, Mineola, Texas ("**Hightower**").

WHEREAS, on January 19, 2007, Chisholm Trail filed an application to change the community of license of KNID from Alva to Mustang, Oklahoma, which was assigned the file number BMPH-20070119AHJ by the Federal Communications Commission ("FCC") (the "**KNID Application**").

WHEREAS, Chisholm Trail desires to amend the KNID Application to specify a new site (the "**Amended KNID Application**").

WHEREAS, Hightower, in order to accommodate the Amended KNID Application, is willing to file a minor change application to modify the facilities of KMOO-FM as specified herein (the "**KMOO-FM Application**").


WHEREAS, the parties have agreed to file contingent applications pursuant to Section 73.3517(e) of the FCC's Rules as described more specifically herein; and

WHEREAS, the Amended KNID Application and the KMOO-FM Application will serve the public interest by providing better service to the public; and

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and agreements set forth herein, Chisholm Trail and Hightower hereby agree as follows:

1. (a) The KMOO-FM Application shall specify the operation of KMOO-FM with a directional antenna in order to protect the proposed reference coordinates of vacant Channel 260A at Van Alstyne, Texas (the "**Van Alstyne Channel**") as outlined in Exhibit A. Chisholm Trail shall prepare the KMOO-FM Application. Hightower agrees that, after it has been given five (5) business days to review the KMOO-FM Application, and provided that it is reasonably satisfied with the proposal, it will authorize the filing of the KMOO-FM Application so that it can be filed on the same day that the Amended KNID Application is filed. Hightower shall take no action to interfere with, delay, or prevent the grant of the KMOO-FM Application or the Amended KNID Application. If the KMOO-FM Application is dismissed or denied, or if the FCC requests correction of a deficiency, Hightower agrees to use reasonable efforts to resolve the deficiencies in a manner that does not materially diminish the benefit of this Agreement for the parties and to refile the KMOO-FM Application if necessary, all at Chisholm Trail's expense.

(b) Hightower agrees that it shall not construct the facilities specified in the KMOO-FM Application until (i) the KMOO-FM Application is granted by Final Order (defined below) (the "**KMOO-FM Permit**"), (ii) the Amended KNID Application is granted by Final Order,



[REDACTED]

For the purposes of this Agreement, a "**Final Order**" shall mean an action of the FCC that is no longer subject to reconsideration, review, or appeal under applicable law before the FCC (including on the FCC's own motion) or before any court of competent jurisdiction.

(c) Upon completion of construction of the facilities authorized by the KMOO-FM Permit, Hightower shall file a license to cover application for KMOO-FM's authorized facilities (the "**KMOO-FM License Application**").

2. In consideration of the filing of the KMOO-FM Application,

(a) Chisholm Trail shall pay Hightower the total amount of [REDACTED] to be delivered by Chisholm Trail as follows: (i) [REDACTED] within five (5) days after the KMOO-FM Application is granted by Final Order, (ii) [REDACTED] within five (5) days after the KMOO-FM License Application is filed, and (iii) [REDACTED] within ten (10) days after the KMOO-FM License Application is granted by Final Order. If, for any reason, [REDACTED] it may retain the payment specified in Section 2(a)(i) and Chisholm Trail shall be relieved of the payment obligations specified in Sections 2(a)(ii) and 2(a)(iii), except as provided below. Each such payment shall be made by wire transfer of immediately available funds and shall be final and non-refundable and shall be made without offset.

(b) Notwithstanding the foregoing [REDACTED] then Chisholm Trail shall pay to Hightower an amount equal to ten (10) percent of the balance remaining of the total consideration specified in Section 2(a) above (in the manner set forth in Section 2(a)) within five (5) days after the date [REDACTED]

[REDACTED] and this Agreement terminates pursuant to Section 3 below, the payments which have been made pursuant to Section 2(a)(i) and 2(b) shall be retained by Hightower and Chisholm Trail shall be relieved of the obligation to pay the balance remaining of the total consideration at the time of termination.

(c) Chisholm Trail shall promptly reimburse Hightower for (1) all FCC filing fees and all reasonable technical and legal expenses necessary to negotiate this Agreement to the extent such costs do not exceed [REDACTED] (ii) Hightower's reasonable costs [REDACTED] filing the KMOO-FM License Application and (iv) actual construction costs to be based on an estimate obtained within 60 days of the notification contemplated in Section 1(b)(iv) for equipment comparable to that listed in Exhibit B. Chisholm Trail shall make such

reimbursements within ten (10) days after Chisholm Trail receives reasonable documentation of such expenses from Hightower.

3. This Agreement shall terminate upon i) the grant of the KMOO-FM License Application by Final Order and receipt of final payment; ii) the grant by Final Order of an application for construction permit for the Van Alstyne allotment that does not require the modification of KMOO-FM; iii) the deletion of the Van Alstyne allotment; iv) [REDACTED] or iv) by mutual agreement of the parties.

4. Chisholm Trail and Hightower shall cause any successor of its FCC licenses, which are the subject of this Agreement, to assume this Agreement in writing. This Agreement shall inure to the benefit of, and be binding upon, the successors and permitted assigns of the parties hereto. No assignment shall relieve a party of its obligations hereunder.

5. If any term or provision of this Agreement is determined to be void, unenforceable, or contrary to law, the remainder of this Agreement shall continue in full force and effect provided that such continuation would not materially diminish the benefits of this Agreement for any party.

6. This Agreement sets forth the entire understanding of the parties hereto at the time of execution and delivery hereof with respect to the subject matter hereof and may not be amended except by written amendment signed by both parties. All prior agreements between the parties with respect to the subject matter hereof shall be of no further force or effect. The undersigned each represents and warrants that it has the requisite authority to bind its respective party to the terms and obligations of this Agreement.

7. The parties acknowledge that this Agreement shall be filed with the FCC with references to the payment amounts redacted.

8. If Hightower materially breaches its obligations under this Agreement, Chisholm Trail shall have the right to seek injunctive relief or specific performance as Chisholm Trail's exclusive remedy. Hightower agrees to waive any defense as to the adequacy of Chisholm Trail's remedies at law and to interpose no opposition, legal or otherwise, to injunctive relief or specific performance as a remedy. If Chisholm Trail breaches its obligations under this Agreement, Hightower shall have the right to seek damages at law or injunctive relief or specific performance for such breach.

9. This Agreement may be signed in counterparts with the same effect as if the signature on each counterpart were on the same instrument. Delivery of executed counterpart signatures to this Agreement by facsimile or other electronic transmission shall be effective as delivery of original counterpart signatures to this Agreement.

10. Except to the extent required by law, neither Hightower nor Chisholm Trail shall disclose the existence of this Agreement or make known any of its terms to any person other than its attorneys, engineers, and representatives to whom disclosure is necessary to effectuate the purposes of this Agreement and who are similarly bound to hold the existence of this Agreement

and its terms in confidence. Provided however, that Hightower may disclose the terms of this Agreement to a prospective buyer of KMOO-FM.

11. During the term of this Agreement, Hightower agrees that, it will not negotiate, discuss or solicit proposals from any other party for the purpose of modifying KMOO-FM in a manner contrary to the goals of this Agreement.

12. This Agreement shall be governed by and construed according to the laws of the State of Oklahoma, specifically excluding its choice-of-laws provisions.

13. Each party shall indemnify, defend and hold harmless the other from and against any and all loss, liability, cost and expense (including reasonable attorneys' fees) arising from any failure to comply with the terms of this Agreement. The obligations under this section shall survive any termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

HIGHTOWER RADIO, INC.

By: 

Name:

JASON HIGHTOWER

Title:

PRESIDENT

CHISHOLM TRAIL BROADCASTING, CO.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

and its terms in confidence. Provided however, that Hightower may disclose the terms of this Agreement to a prospective buyer of KMOO-FM.

11. During the term of this Agreement, Hightower agrees that, it will not negotiate, discuss or solicit proposals from any other party for the purpose of modifying KMOO-FM in a manner contrary to the goals of this Agreement.

12. This Agreement shall be governed by and construed according to the laws of the State of Oklahoma, specifically excluding its choice-of-laws provisions.

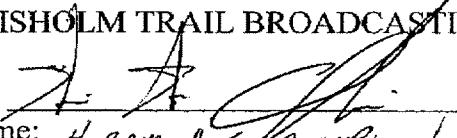
13. Each party shall indemnify, defend and hold harmless the other from and against any and all loss, liability, cost and expense (including reasonable attorneys' fees) arising from any failure to comply with the terms of this Agreement. The obligations under this section shall survive any termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

HIGHTOWER RADIO, INC.

By: \_\_\_\_\_  
Name:  
Title:

CHISHOLM TRAIL BROADCASTING, CO.

By:   
Name: *HIRAM A CHAMPLIN*  
Title: *PRES.*

**EXHIBIT A**

KMOO-FM Application Facilities

## **Exhibit B**

2008 Estimate

(to be updated prior to construction per Section 2(c)(iv))

- ERI 3 Bay Antenna with Range Time
- New Coax
- Tower crew and engineer to tune antenna
- Shipping for equipment
- Tax