

CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (the “*Agreement*”) is entered into as of this ____ day of August, 2015, by and between RIVIERA BROADCASTING LLC, and/or its assigns (“*Contractor*”), and MARY V. GUTHRIE (“*Permittee*”).

RECITALS:

A. Permittee holds the Permit issued by the Federal Communications Commission for FM Translator Station K270BZ, Phoenix, AZ (FCC Facility ID No. 152717) (the “*Station*”), FCC File No. BNPFT-20130822AFY (the “*Permit*”);

B. Permittee desires to modify the Permit to change the Station’s Tower Site to South Mountain; and

C. Permittee shall (i) modify the Permit to specify upgraded facilities for the Station and (ii) obtain the Modified Permit; and

D. Permittee desires to retain Contractor to construct the facilities proposed in the Modified Permit, subject to consultation with Permittee.

NOW THEREFORE, in consideration of the above and of the mutual promises covenants contained herein, the parties, intending to be legally bound, agree as follows:

1. DEFINITIONS.

1.1. **Definitions.** As used herein, unless otherwise defined, shall have the meaning or meanings assigned to them as described on **Exhibit 6**, hereto.

2. THE WORK.

2.1. **Contractor’s Undertakings.** Contractor agrees to and shall do the following at Contractor’s sole expense:

2.1.1. **Acquisitions.** In consultation with Permittee, specify for the purchase or lease by Contractor of any equipment, supplies and materials necessary or appropriate for the construction and installation of the facilities described in the Budget and Specifications and as authorized in the Modified Permit; and

2.1.2. **Building Authorizations.** In cooperation with Permittee, timely obtain and file any zoning, building and other permits that are required in connection with the Work; and

2.1.3. **Installation.** With the cooperation and supervision of the Permittee, construct and/or install the facilities described in the Budget and Specifications in accord-

ance with the Modified Permit and all applicable zoning, building or other governmental laws, ordinances or regulations.

2.1.4. **Financial Commitment.** Pay (or promptly reimburse Permittee for) (i) the reasonable and necessary costs attendant to the preparation, filing and prosecution of the Modified Permit, and (ii) the build-out of the Modified Permit.

2.1.5. **Transmission Space Sublease.** Contractor presently has a license to use antenna and transmitter space at the Site. Subject to the prior consent of the FCC, the transmitter and antenna for the Station may be co-located with K235CD at the Site. Accordingly, subject to the consent of the FCC to relocate the Station to the Site, Contractor agrees to sublet Contractor's space at the Site to Permittee for a monthly rental of **ONE THOUSAND AND NO/100 U.S. DOLLARS** (\$1,000.00) per calendar month so long as (i) Permittee is the FCC authorized permittee or licensee of the Station, (ii) Permittee has authority to relocate the Station to the Site and the Station is, indeed, physically moved to the Site, and (iii) Contractor retains its license to use space for K235CD at the Site.

2.1.5.1. **Conditions Pertaining to Sublease.** The monthly rental amounts due from Permittee to contractor for the sublease shall be prorated for partial months during which the Station's transmission facilities are co-located with K235CD at the Site; *provided, however*, that Permittee's obligation to pay rent to Contractor shall not begin until the date that the Station commences Program Tests. Permittee's sublease with Contractor shall terminate upon either (i) the Closing under the Purchase Agreement, or only in the event the Closing does not occur, then (ii) upon the receipt by Contractor of a written notice of termination from Permittee.

2.1.6. **Capital Expenditure/Operating Expense Fund.** As evidence of Contractor's good faith performance in connection with this **Section 2.1**, on or before the Commencement Date, Contractor shall make and deliver to the Escrow Agent (as identified in the Escrow Agreement) a threshold deposit to establish the Operating Fund. The Contractor's obligation to maintain the Operating Fund shall not exceed or require Contractor to pay, in the aggregate, more than the Fund Limit. The Operating Fund may be drawn upon by Permittee, solely on an imprest basis, *i.e.*, written requests made and delivered by Permittee to Escrow Agent, with copies to Contractor, and supported by reasonable and necessary documentation that evidences the intended use by Permittee to pay for Maintenance Expenses. Upon the receipt of a written request and documentation from Permittee that is acceptable to Escrow Agent respecting a disbursement for Maintenance Expenses, Escrow Agent then shall disburse funds to Permittee and Permittee directly and promptly shall apply monies from the Operating Fund for the Maintenance Expenses reflected in that documentation that was submitted by Permittee to the Escrow Agent. Once the Fund Limit is reached by imprest requests, then the burden and obligation for Maintenance Expenses and/or

Capital Expenditures shall be solely the Permittee's, subject to subsequent reimbursement of any such expenses by Contractor.

2.2.2. **Permittee's Undertakings.** Permittee has done or agrees to and shall do the following:

2.2.1. **Permit's Maintenance.** Maintain in effect the Permit;

2.2.2. **Prosecute the Modified Permit.** Promptly complete and file the FCC Application(s) and paperwork necessary for the Permittee to acquire and the Modified Permit, and then diligently prosecute the FCC Application to obtain the Modified Permit.

2.2.3. **License Application.** If the Closing under the Purchase Agreement has not yet occurred when construction is completed, then prepare and timely file with the FCC an application for license (FCC Form 350) for the constructed facilities in accordance with the Rules and Regulations;

2.2.4. **Cooperation.** Cooperate with Contractor in timely filing and obtaining any zoning, building and other authorizations or permits that reasonably may be required in connection with the Budget and Specifications and the Work, and execute the necessary documents and agreements provided by Contractor in accordance with its obligations hereunder; and

2.2.5. **Lease Implementation.** Obtain and maintain any real property interests, including leases or licenses, necessary for construction of the Station's transmission facilities as specified in the Modified Permit, and cooperate with Contractor in maintaining all governmental approvals for the Station's Tower Site as specified in the Modified Permit, including state and local zoning and building permits. Any lease entered into by Permittee will be assumed by Contractor should this Agreement be terminated under its terms or should Contractor or its assignee acquire the Station. Contractor indemnifies Permittee and holds it harmless with respect to any liabilities or obligations under any such lease and Contractor will, at its own expense, defend Permittee in connection with any claim or suit brought against Permittee in connection with such lease.

2.3. **Alterations.** No Alterations shall be made by Contractor or permitted unless incorporated into **Exhibit 1**, hereto and initialed by the parties, or otherwise agreed to in advance in writing by Permittee.

3. COMPLETION OF THE WORK.

3.1. **Work Implementation.** The Work shall commence as of the Effective Date and shall be substantially completed as promptly as reasonably practicable thereafter; *provided, however*, that Permittee acknowledges that Contractor shall have no obligation or liability to Permittee if the Work is suspended or delayed by reason of strikes, labor

troubles, inability to procure material, failure of power, governmental actions or inactions, riots, insurrection, terrorist acts, war or other reasons beyond the control of Contractor.

3.2. Work Completion. The Work shall be deemed to be substantially complete when (i) construction is sufficiently complete, in accordance with the Contract Documents, so that the Station may initiate operations pursuant to Program Test Authority under the Rules and Regulations, using the facilities proposed in the Modified Permit and (ii) all other permits, modifications of permits, authorizations and licenses necessary to operate the Station consistent with the Modified Permit. Any Work that remains to be completed after the date of substantial completion shall, if reasonably feasible, be completed by Contractor within ninety (90) days after the date of substantial completion.

4. COST OF THE WORK.

4.1. Contractor's Obligation. Contractor shall be responsible for the entire cost of the Work and, except as provided in **Section 11.1**, and shall not be entitled to reimbursement for any such costs, even if the parties never effect a Closing respecting the Purchase Agreement.

5. CONTRACTOR'S CONSTRUCTION OBLIGATIONS.

5.1. Work Oversight. Contractor shall oversee the completion of the Work, using reasonably its best skill and attention and, subject to the reasonable concurrence of Permittee, which Permittee shall not unreasonably withhold. Contractor shall be responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Agreement.

5.2. Contractor's Accountability. Contractor shall be responsible to the Permittee for the acts and omissions of Contractor's employees, contractors, subcontractors and other persons providing or performing any of the Work.

5.3. Materials and Implements. Contractor shall provide or cause to be provided all labor, materials, equipment, tools, construction, equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

5.4. Quality of Materials and Equipment. Contractor warrants to Permittee that all materials and equipment furnished under this Contract will be new, unless otherwise specified in **Exhibit 1**, and that all Work will be of good, workman-like quality, free from Material faults and in conformance with the Contract Documents.

5.5. ***Compliance Obligation.*** Contractor shall comply in all material respects with all laws, ordinances, rules, regulations and lawful orders of any public authority applicable to the Work.

5.6. ***Progress Reports.*** Upon the reasonable request of Permittee, Contractor shall prepare and submit to Permittee, from time to time, an estimated progress schedule for the Work.

6. SUBCONTRACTORS.

6.1. ***Subcontractor Conformance.*** By an appropriate written agreement, Contractor shall use its commercially reasonable efforts to require each subcontractor retained by Contractor to perform its respective portion of the Work in accordance with the terms of the Contract Documents.

6.2. ***Subcontractor Qualifications.*** Any Consultant utilized or employed by Contractor shall have training and experience adequate to perform such Work in a professional and workman-like manner. For the purposes of this Agreement

7. PROTECTION OF PERSONS AND PROPERTY.

7.1. ***Safety.*** Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to all:

7.1.1. ***Worksite Employees.*** Individuals employed to perform the Work;

7.1.2 ***Materiel Handling.*** Materials and equipment to be used in the Work, whether in storage, on or off the Site, under the care, custody or control of Contractor or any of its subcontractors; and

7.1.3. ***Miscellaneous Property.*** Other property at the Site or adjacent thereto.

7.2. ***Notice Obligations.*** Contractor shall give all notices and comply in all material respects with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority applicable to the safety of persons involved in the Work.

8. INSURANCE.

8.1. ***Contractor's Insurance Obligation.*** Contractor shall purchase and maintain, or shall require its Consultants to, maintain –at a minimum – following insurance, as applicable, with limits of liability not less than the amounts stated below and meeting the requirements set forth herein. All insurance certificates shall include a clause obligating the insurer to give Permittee and Contractor not less than thirty (30) days prior written notice of any material change in, cancellation of, or intent not to renew such insurance. Permittee and Contractor shall be added as a named insured to such insurance policies as

applicable. Prior to the initiation of any Work, Contractor upon Permittee's written request, shall provide Permittee with certificates of insurance evidencing the insurance coverage specified below and naming Permittee and its Affiliates as additional insureds. The insurance maintained by Contractor or its Consultants shall be to protect Contractor and Permittee, and their Affiliates, from claims set forth below which may arise out of or result from the Work, whether such operations be by Contractor or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable for claims:

8.1.1. ***Workman's Compensation and Employer's Liability Insurance.*** Workers' Compensation and Employer's Liability Insurance, affording coverage under the laws of Arizona, with minimum limits of **ONE MILLION U.S. DOLLARS (\$1,000,000)** for injury by accident and **ONE MILLION U.S. DOLLARS (\$1,000,000)** for injury by diseases, with a standard waiver of subrogation endorsement in favor of Permittee;

8.1.2. ***Personal Injury and Property Damage.*** Commercial General Liability Insurance for bodily injury and property damage, including fire, theft and vandalism, with limits of no less than \$2,000,000 in the aggregate and no less than \$1,000,000 per occurrence, with Permittee named as a co-payee.

8.2. ***Insurance Certificates.*** Certificates of Insurance acceptable to Permittee and Contractor shall be delivered to Permittee upon request. These Certificates shall contain a provision that coverage afforded under the policies will not be canceled until at least thirty (30) days' prior written notice has been given to the Permittee and Contractor.

9. INDEMNIFICATION.

9.1. ***Contractor's Indemnification.*** Contractor agrees to and shall indemnify, defend and hold harmless Permittee and its Affiliates, from and against any Damages caused by or arising from (i) the Work or other activities of Contractor or its Affiliates on or with respect to the Tower Site, (ii) any breach of this Agreement of or by Contractor or its Consultants, (iii) release or threat of release of Hazardous Materials at, on, or under the Tower Site caused by the Work (as such terms are defined under CERCLA or analogous or similar state or local statute or ordinance), or (iv) any willful misconduct or negligence of or by Contractor or its Consultants relating to the Work, except to the extent that such Damages are caused by the gross negligence or willful misconduct of the party requesting indemnification hereunder. In the event this indemnification is triggered, Permittee shall give Contractor prompt written notice of such indemnification claim, including facts relating to same. Notwithstanding any provision to the contrary, this indemnification shall survive termination or expiration of this Agreement.

9.2. ***Permittee's Indemnification.*** Permittee agrees to and shall indemnify, defend and hold harmless Contractor and its Affiliates, from and against any Damages caused by or arising from (i) the Work or other activities of Permittee or its Affiliates on or with re-

spect to the Tower Site, (ii) any breach of this Agreement of or by Permittee, (iii) release or threat of release of Hazardous Materials at, on, or under the Tower Site (as such terms are defined under CERCLA or analogous or similar state or local statute or ordinance), or (iv) any willful misconduct or negligence of or by Permittee or its Affiliates, except to the extent that such Damages are caused by the gross negligence or willful misconduct of the party requesting indemnification hereunder. In the event this indemnification is triggered, Contractor shall give Permittee prompt written notice of such indemnification claim, including facts relating to same. Notwithstanding any provision to the contrary, this indemnification shall survive termination or expiration of this Agreement.

10. TERMINATION.

10.1. **Conditions for Termination.** This Agreement shall terminate, and neither party shall have any further obligation hereunder, upon the earlier to occur of (a) the consummation of the assignment of the Permit or Modified Permit to Contractor, or its assignee, (b) the completion of the Work or (c) a termination of the Purchase Agreement in accordance with the terms thereof other than as provided in (a) above.

11. LICENSE ONLY.

11.1. **License Rights.** The rights granted to Contractor under this Agreement comprise a license only, and may be revoked by Permittee at any time for cause. In the event that this license is reasonably interpreted or construed to be in violation of Permittee's underlying ground lease involving the Tower Site, then this license immediately shall terminate and be null and void. Notwithstanding any provision of this Agreement to the contrary, in the event this license is terminated so the Work may not be performed or completed by Contractor, then Permittee shall promptly and fully reimburse Contractor for any and all monies committed or expended by Contractor in connection with this Construction Agreement or the Work up to the date of termination.

11.1.1. **No Joint Venture.** The Parties agree that nothing herein shall constitute a joint venture between them. The Parties acknowledge that call letters, trademarks and other intellectual property, and tangible personal property shall remain the property of the respective parties and that neither party shall obtain any ownership interest in the other party's property, intellectual or otherwise, by virtue of this Agreement, except as expressly provided herein. All equipment and/or Station assets acquired and paid for by Contractor and be and remain the property of Contractor, whether it is deemed a fixture or not.

12. CERTAIN MUTUAL REPRESENTATIONS AND WARRANTIES.

12.1. **Mutual Representations.** Permittee and Contractor each represents that it is legally qualified, empowered and able to enter into this Agreement, and that the execu-

tion, delivery and performance hereof shall not constitute a breach or violation of any agreement, contract or other obligation or any kind to which either party is subject or by which it is bound. Permittee and Contractor each further warrant, represent, covenant and certify that Permittee maintains, and shall continue to maintain, ultimate control over the Station's facilities during the Term of this Agreement, including, without limitation, control over the Station's finances, personnel and programming. Each party hereto represents and warrants that it has taken all necessary "corporate" or other necessary action to make this Agreement legally binding on such party, and that the individual signing this Agreement on behalf of such party has been fully authorized and empowered to execute this Agreement on behalf of such party. Permittee and Contractor each represents to the other that it has not engaged a broker in connection with this Agreement and agrees to indemnify the other and hold the other harmless against any claim any broker or finder based upon any agreement, arrangement, or understanding alleged to have been made by Contractor or by Permittee, as the case may be.

12.1.1. **No Consents Required.** Permittee and Contractor each represents to the other that (i) no other consent of any other party, and (ii) no other consent, license, approval or authorization of, or exemption by, or filing, restriction or declaration with, any governmental authority, bureau, agency or regulatory authority is required in connection with the execution, delivery, validity or enforceability of this Agreement.

12.1.2. **No Encumbrance.** Permittee and Contractor each represents to the other that neither the execution or delivery of this Agreement, nor the consummation of the transactions contemplated herein will constitute or result in the breach of any term, condition or provision of, or constitute a default under or result in the creation of any lien, charge or encumbrance upon any property or assets of Permittee or Contractor, pursuant to their respective articles of incorporation or organization, by-laws, any agreement or other instrument to which Permittee or Contractor are a party or by which any part or their respective property is bound, or violate any law, regulation, judgment or order binding upon Permittee or Contractor, provided that Permittee makes no representation as to whether this agreement would breach the Tower Site lease or license.

12.1.3. **No Adverse Action.** No proceeding is pending against Permittee or Contractor, or, to the knowledge of Permittee or Contractor, threatened before any court or governmental agency to restrain or prohibit, or to obtain damages, or other relief in connection with this Agreement or the consummation of the transactions contemplated hereby.

13. CAPITAL EXPENDITURES.

13.1. **Contractor's Property; Installed Assets.** Should Contractor make capital expenditures relative to the facilities or equipment used or held for use at the Station in connection with this Agreement, then upon termination of this Agreement, for whatever

reason except of the sale of the Station to Contractor, such capital expenditures shall be and remain the property of Contractor; *provided, however*, that should the removal of any of any Installed Asset cause Material or irreparable damage to any of the equipment or facilities owned by Permittee or the Tower Site's owner, then in the event of the termination of this Agreement ownership of such Installed Asset shall be ascribed to and such shall become the property of Permittee.

14. MISCELLANEOUS PROVISIONS.

14.1. ***Governing Provisions.*** Additional provisions that shall govern the operation and interpretation of this Agreement are set forth on **Exhibit 4**, and hereby are incorporated as if fully set forth herein.

14.2. ***Listing of Exhibits and Schedules.***

DOCUMENT	IDENTIFICATION
Exhibit 1	Budget and Specifications
Exhibit 2	Transmitter Site Description
Exhibit 3	Specifications for Modified Permit
Exhibit 4	Miscellaneous Governing Provisions
Exhibit 5	Notice
Exhibit 6	Definitions

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK – SIGNATURE PAGE IS NEXT]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed and executed by their proper thereunto duly authorized as of the day and year above written.

PERMITTEE: MARY V. GUTHRIE

By: 
Name: Mary V. Guthrie
Title: Owner

CONTRACTOR: RIVIERA BROADCASTING LLC

By: _____
Name: Michael A. Cutchall
Title: Chief Executive Officer

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed and executed by their proper thereunto duly authorized as of the day and year above written.

PERMITTEE: MARY V. GUTHRIE

By: _____
Name: Mary V. Guthrie
Title: Owner

CONTRACTOR: RIVIERA BROADCASTING LLC

By: 
Name: Michael A. Cutchall
Title: Chief Executive Officer

Exhibit 1 –BUDGET AND SPECIFICATIONS

Budget for Buildout of K270BZ TX Site

*This budget is only for the K270BZ South Mtn transmission facility and does not include items required at Riviera studios and KEXX TX site

Item	Supplier	Cost
Scala antenna model 754-154-FM-CP	SCMS	\$5,500
Shively branch combiner model 2930-2/3	SCMS	\$6,500
Gates Flexiva compact FM transmitter model FAX1k w/GPS	SCMS	\$9,750
Connectors/jumpers	SCMS/Talley Communications	\$600
Fabrication in field of antenna mounting brackets, installation of antenna on tower	CFD/Radiowaves L.L.C.	\$3,500
	total:	<u>\$25,850</u>

Exhibit 2 – TRANSMITTER SITE DESCRIPTION

Lease Site Name / Number # K270BZ

Site Location: South Mountain, Phoenix, AZ

Site Address: 429 N. 30th Street, Phoenix, AZ 85008

FCC Antenna Structure Registration No: 1019338 (see Attached ASR Summary)

SITE ELEVATION (METERS)	OVERALL HEIGHT ABOVE GROUND (METERS)	OVERALL HEIGHT ABOVE SEA LEVEL (METERS)	LATITUDE (NAD 83)	LONGITUDE (NAD 83)
784.9	61.0	854.9	33-20-05 N	112-03-42.0 W

ASR Registration Search

Registration 1019338 [Map Registration](#)**Registration Detail**

Reg Number	1019338	Status	Constructed
File Number	A0941586	Constructed	01/01/1967
EMI	No	Dismantled	
NEPA	No		

Antenna Structure

Structure Type TOWER - Free standing or Guyed Structure used for Commu

Location (in NAD83 Coordinates)

Lat/Long	33-20-05.0 N 112-03-42.0 W	Address	SOUTH MOUNTAIN TRANSMITTER SITE
City, State	PHOENIX , AZ		
Zip	85048	County	MARICOPA
Center of AM Array		Position of Tower in Array	

Heights (meters)

Elevation of Site Above Mean Sea Level	Overall Height Above Ground (AGL)
784.9	61.0
Overall Height Above Mean Sea Level	Overall Height Above Ground w/o Appurtenances
845.9	61.0

Painting and Lighting Specifications

None

FAA Notification

FAA Study	96-AWP-3332-OE	FAA Issue Date	03/17/1997
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**Owner & Contact Information**

FRN	0023451453	Owner Entity Type	Limited Liability Company
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Owner

Vertical Bridge Towers, LLC
Attention To: FCC Contact
750 Park of Commerce Drive
Suite 200
Boca Raton , FL 33487

P: (561)221-0987
F:
E: FCC-FAA@verticalbridge.com

Contact

Lindeman , Leslie N
Attention To: FCC Contact
750 Park of Commerce Drive
Suite 200
Boca Raton , FL 33487

P: (561)221-0987
F:
E: FCC-FAA@verticalbridge.com

**Last Action Status**

Status	Constructed	Received	04/21/2015
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Purpose	Admin Update	Entered	04/21/2015
Mode	Interactive		

Related Applications

04/21/2015	A0941586 - Admin Update (AU)
04/07/2015	A0940362 - Change Owner (OC)
04/03/2007	A0545696 - Change Owner (OC)

Related applications (6)



Comments

Comments

05/22/1997	THE FAA/FCC EMI CONDITIONAL STATEMENT MUST BE PLACED ON THE CP/LICENSE.
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History

Date

Event

04/22/2015	Registration Printed
04/21/2015	ASR Application receipt email sent: Tower email
04/21/2015	Administrative Update Received

All History (13)



Automated Letters

04/22/2015	Authorization, Reference
04/08/2015	Authorization, Reference
04/08/2015	Ownership Change, Reference 856924

All letters (7)



CLOSE WINDOW

Exhibit 3 – SPECIFICATIONS FOR MODIFIED PERMIT

SECTION III - PREPARER'S CERTIFICATION

I certify that I have prepared Section III (Engineering Data) on behalf of the applicant, and that after such preparation, I have examined and found it to be accurate and true to the best of my knowledge and belief.

Name ALAN D. KIRSCHNER		Relationship to Applicant (e.g., Consulting Engineer) TECHNICAL CONSULTANT	
Signature		Date 8/4/2015	
Mailing Address 6029 ST PETERS CHURCH RD			
City MYRTLE BEACH	State or Country (if foreign address) SC	Zip Code 29588 - 5203	
Telephone Number (include area code) 8436853714	E-Mail Address (if available) AKIRSCH@SPRYNET.COM		

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

Section III-A - Engineering

TECHNICAL SPECIFICATIONS

Ensure that the specifications below are accurate. Contradicting data found elsewhere in this application will be disregarded. All items must be completed. The response "on file" is not acceptable.

TECH BOX

1.	Channel: 270								
2.	Primary Station:								
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; padding: 5px;">Facility ID Number</td> <td style="width: 25%; padding: 5px;">Call Sign</td> <td style="width: 40%; padding: 5px;">City</td> <td style="width: 10%; padding: 5px;">State</td> </tr> <tr> <td style="padding: 5px;">54944</td> <td style="padding: 5px;">KEXX</td> <td style="padding: 5px;">GILBERT</td> <td style="padding: 5px;">AZ</td> </tr> </table>	Facility ID Number	Call Sign	City	State	54944	KEXX	GILBERT	AZ
Facility ID Number	Call Sign	City	State						
54944	KEXX	GILBERT	AZ						
3.	Delivery Method (Select One): <input type="radio"/> Off-air <input type="radio"/> Microwave <input type="radio"/> Satellite <input type="radio"/> Via <input checked="" type="radio"/> Other								
4.	Antenna Location Coordinates: (NAD 27) Latitude: Degrees 33 Minutes 20 Seconds 4.8 <input checked="" type="radio"/> North <input type="radio"/> South Longitude: Degrees 112 Minutes 3 Seconds 39.5 <input checked="" type="radio"/> West <input type="radio"/> East								
5.	Antenna Structure Registration Number: 1019338 <input type="checkbox"/> Not Applicable <input type="checkbox"/> Notification filed with FAA								
6.	Antenna Location Site Elevation Above Mean Sea Level: 785 meters								
7.	Overall Tower Height Above Ground Level: 61 meters								
8.	Height of Radiation Center Above Ground Level: 31 meters(H) 31 meters(V)								
9.	Effective Radiated Power: 0.25 kW(H) 0.25 kW(V)								
10.	Transmitting Antenna: Before selecting Directional "Off-the-Shelf", refer to "Search for Antenna Information" under CDBS Public Access (http://licensing.fcc.gov/prod/cdbb/pubacc/prod/cdbb_pa.htm). Make sure that the Standard Pattern is marked Yes and that the relative field values shown match your values. Enter the Manufacturer (Make) and Model exactly as displayed in the Antenna Search.								

☐ Nondirectional ☒ Directional Off-the Shelf ☐ Directional composite

Manufacturer SCA Model 754 154

Rotation: 86 degrees ☐ No Rotation

Degrees	Value	Degrees	Value	Degrees	Value	Degrees	Value	Degrees	Value	Degrees	Value
0	1	10	0.98	20	0.92	30	0.83	40	0.73	50	0.6
60	0.48	70	0.36	80	0.26	90	0.18	100	0.12	110	0.09
120	0.07	130	0.05	140	0.03	150	0.03	160	0.05	170	0.06
180	0.07	190	0.06	200	0.05	210	0.03	220	0.03	230	0.05
240	0.07	250	0.09	260	0.12	270	0.18	280	0.26	290	0.36
300	0.48	310	0.6	320	0.73	330	0.83	340	0.92	350	0.98
Additional Azimuths											

[Relative Field Polar Plot](#)

11. **For FM Boosters and Fill-in translators only.**

a. **FM Fill-in translators.** Applicant certifies that the FM translator's (a) coverage contour does not extend beyond the protected contour of the commercial FM primary station to be rebroadcast, or (b) entire 60 dBu contour is contained within the lesser of: (i) the 2 mV/m daytime contour of the AM primary station to be rebroadcast, or (ii) a 25-mile radius centered at the AM primary station's transmitter site.

☒ Yes ☐ No
☐ N/A

See Explanation in
[Exhibit 10]

b. **FM Boosters.** Applicant certifies that the FM Booster station's service contour is entirely within the primary station's protected coverage contour.

☐ Yes ☐ No
☒ N/A

See Explanation in
[Exhibit 11]

12. **Interference.** The proposed facility complies with all of the following applicable rule sections. Check all that apply:

☒ Yes ☐ No

See Explanation in
[Exhibit 12]

Overlap Requirements.

☒ a) 47 C.F.R. Section 74.1204

[Exhibit 13]

Exhibit Required.

Television Channel 6 Protection.

☐ b) 47 C.F.R. Section 74.1205 with respect to station(s)

[Exhibit 14]

Exhibit Required.

13. **Unattended operation.** Applicant certifies that unattended operation is not proposed, or if this application proposes unattended operation, the applicant certifies that it will comply with the requirements of 47 C.F.R. Section 74.1234.

☒ Yes ☐ No

See Explanation in
[Exhibit 15]

14. **Multiple Translators.** Applicant certifies that it does not have any interest in an application or an authorization for an FM translator station that serves substantially the same area and rebroadcasts the same signal as the proposed FM translator station.

☒ Yes ☐ No

See Explanation in
[Exhibit 16]

15. **Environmental Protection Act.** Applicant certifies that the proposed facility is excluded from environmental processing under 47 C.F.R. Section 1.1306 (i.e., the facility will not have a significant environmental impact and complies with the maximum permissible radiofrequency electromagnetic exposure limits for controlled and uncontrolled environments). Unless the applicant can determine compliance through the use of the RF worksheets in Appendix A, an **Exhibit is required.**

☒ Yes ☐ No

See Explanation in
[Exhibit 17]

By checking "Yes" above, the applicant also certifies that it, in coordination with other users of the site, will reduce power or cease operation as necessary to protect persons having access to the site, tower or antenna from radiofrequency electromagnetic exposure in excess of FCC guidelines.

PREPARER'S CERTIFICATION ON PAGE 4 MUST BE COMPLETED AND SIGNED.

Exhibit 4 – MISCELLANEOUS GOVERNING PROVISION

1. **Confidentiality.** Subject to the requirements of applicable law, Contractor and Permittee shall each keep confidential all information obtained by them with respect to the other party hereto in connection with this Agreement and the negotiations preceding this Agreement, and will use such information solely in connection with the transactions contemplated by this Agreement, and if the transactions contemplated hereby are not consummated for any reason, each shall return to each other party hereto, without retaining a copy thereof, any schedules, documents or other written information obtained from such other party in connection with this Agreement and the transactions contemplated hereby. Notwithstanding the foregoing, no party shall be required to keep confidential which is: (i) known or available through other lawful sources, not bound by a confidentiality agreement with the disclosing party; (ii) or becomes publicly known through no fault of the receiving party or its agents; (iii) required to be disclosed pursuant to an order or request of a judicial or governmental authority (provided the party other than the disclosing party is given reasonable prior notice of the order or request and the purpose of the disclosure); (iv) developed by the receiving party independently of the disclosure by the disclosing party, (v) disclosed in connection with the enforcement of the rights and remedies of such party hereunder, or (vi) disclosed to its affiliates, agents, auditors and consultants.

2. **Construction of Agreement.** This Agreement is the product of negotiation and preparation by, between and among Permittee and Contractor. Accordingly, the parties hereto acknowledge and agree that this Agreement shall not be deemed prepared or drafted by one party or another, and shall be construed accordingly.

3. **Cooperation.** The parties hereto agree to cooperate fully with each other in preparing, filing, prosecuting, advocating grant, and taking any other actions necessary with respect to any applications or actions which are or may be necessary to obtain the consent of the FCC or of any other governmental instrumentality, or any third party to, or are or may be necessary or helpful in order to accomplish the transactions contemplated by this Agreement.

4. **Counterparts.** This Agreement may be signed in any number of counterparts with the same effect as if the signatures on all counterparts were upon the same instrument.

5. **Disputes.** In the event Permittee or Contractor in good faith dispute the actions of the other, or contest any basis for termination exercised pursuant to this Agreement, the termination shall not become effective until the dispute is arbitrated as provided herein. Any dispute pursuant to this Agreement shall be resolved by binding arbitration in accordance with the rules of the American Arbitration Association. The prevailing party shall be entitled to reimbursement from the non-prevailing party of all reasonable expenses actually incurred to comply with this arbitration provision. The prevailing party shall mean the party that is successful in obtaining substantially all the relief sought.

6. **Entire Agreement.** The Ancillary Agreements and the documents relating to the transactions contemplated herewith set forth the entire agreement of the Parties and is intended to

supersede all prior negotiations, understandings, and agreements and cannot be altered, amended, changed or modified in any respect unless such alteration, amendment, change or modification shall have been agreed to by each of the Parties hereto and reduced to writing in its entirety and signed and delivered by each party.

7. **Exhibits and Schedules.** All schedules, exhibits and riders attached to this Agreement shall be deemed part of this Agreement and incorporated herein, where applicable, as if full set forth herein. For the purposes of this Agreement, exhibits shall be public documents; and schedules shall be proprietary, and not routinely available for public review.

8. **Explication.** Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular and to the singular include the plural, references to any gender include any other gender, the part includes the whole, the term "including" is not limiting, and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder," and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. Article, section, subsection, clause, exhibit and schedule references are to this Agreement, unless otherwise specified. Any reference in or to this Agreement includes any and all permitted alterations, amendments, changes, extensions, modifications, renewals, or supplements thereto or thereof, as applicable.

9. **Further Assurances.** After the Effective Date, each of the parties, upon the reasonable request of the other, will take such reasonable actions or deliver or execute such further documents, materials, signatures, or information as may be reasonably necessary to assure compliance with, or effectuation of, the terms and conditions to this Agreement and the bona fide good faith intentions of the parties hereto. Contractor's access upon the Tower Site shall be for commercially reasonable purposes, and the right of access shall not be abused by Contractor.

10. **Governing Law.** This Agreement shall be governed by the laws of the State of California applicable to contracts made and to be performed there, without reference to the principles of the conflicts of law.

11. **Headings.** The headings contained in this Agreement are included for convenience only and no such heading shall in any way alter the meaning of any provision.

12. **Inspection.** If the Contract Documents, laws, ordinances, rules, regulations or orders or any public authority having jurisdiction require any portion of the Work to be inspected, tested or approved, Contractor shall give Permittee timely notice of its readiness so Permittee may observe such inspection, testing or approval provided that in no way shall Permittee's possible observation serve to delay or hinder such inspection, testing or approval.

13. **Non-Disclosure of Proprietary Information.** Except with the written permission of the other party, which shall not be unreasonably withheld or delayed, Contractor and Permittee, and their respective Affiliates, jointly and severally, agree that for the term of one (1) year from the Closing Date, they

shall not, directly or indirectly, disclose or divulge to any unauthorized person or entity or in any way whatsoever use for their commercial advantage, or to the other party's commercial disadvantage, any Proprietary Information. Neither party, or their Affiliates shall be deemed to have violated this confidentiality covenant should a disclosure be made as required by, but only to the extent such disclosure is (i) required by, the valid and legal order of any court or governmental authority or agency and provided that the disclosing party shall have given prior notice to the other party of any such order, (ii) required in connection with audits and inspections of the books of such party or in connection with enforcement of rights and remedies hereunder, (iii) to its affiliates, agents, auditors and consultants. The provisions of this Section shall be specifically enforceable against either party in a court of law, and such enforcement shall not bar the pursuit of other remedies.

14. **Notice.** Any written notice required hereunder shall be in writing, and notice or other communications shall be deemed given when (a) delivered personally, or mailed by certified mail or overnight courier service (e.g., FedEx or UPS), postage or handling prepaid, or (b) dispatched by facsimile transmission (with the facsimile transmission confirmation being deemed conclusive evidence of such dispatch), or by electronic mail with such notice in the text of the electronic message or in an attached document, in Portable Document Format (PDF), and sent with requests for delivery and read receipts, the return of such receipts being deemed conclusive evidence of such dispatch, in each case addressed to the persons or parties identified on **Exhibit 5**, hereto.

14.1. **Alternate Addresses.** Notice, as provided by this Paragraph, may be given to any other person or party, as any party hereto may in the future designate in writing, upon due notice to the other party(ies) in accordance with this **Section**

14.2. **Date of Notice, Action.** The receipt for deposit with the U.S. Postal Service or overnight courier service specified herein shall establish the date of such notification or communication by mail or overnight courier service, and upon receipt if sent by facsimile or e-mail. If any notification, communication or action is required or permitted to be given or taken within a certain period of time and the last date for doing so falls on a Saturday, Sunday, a federal legal holiday or legal holiday by law in the State of Arizona, the last day for such notification, communication or action shall be extended to the first date thereafter which is not a Saturday, Sunday or such legal holiday.

15. **Property Rights.** Unless assigned in writing by Contractor to Permittee, all of the equipment and other materials purchased or contracted for in connection with the Work shall be and remain the property of Contractor, and no lien or other security interest running to Permittee shall be created or exist under this Agreement or otherwise.

16. **Public Announcements.** The parties agree to reasonably cooperate in coordinating any public announcement or other publicity regarding their activities under this Agreement. Any announcements and/or press releases concerning this Agreement and the transactions contemplated herein shall be

mutually agreed to by Contractor and Permittee prior to their release.

17. **Severability.** If any provision contained in this Agreement is to be held to be invalid, illegal or unenforceable, this shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision or provisions had not been contained herein.

18. **Specific Performance.** The respective obligations of the Parties hereunder are unique and valuable and not readily subject to compensation by money damages alone. Accordingly, in the event either Party should breach its obligations under this Agreement, the other Party shall be entitled to an order directing specific performance from a court of competent jurisdiction, in addition to all other remedies at law or in equity. The prevailing Party shall be entitled to recover its reasonable legal expenses, including attorneys' fees (at trial and on appeal) from the losing party. Each Party shall have the right specifically to enforce the performance of the other Party under this Agreement without the necessity of posting any bond or other security, and the defending Party hereby waives the defense in any such suit that the plaintiff Party has an adequate remedy at law and defending Party agrees not to interpose any opposition, legal or otherwise, as to the propriety of specific performance as a remedy.

19. **Successors and Assigns; Assignment Rights.** Permittee and Contractor each binds itself and its successors, assigns and legal representatives to the other party hereto and to the successors, assigns and legal representatives of such other party with respect to all covenants, agreements and obligations contained in the Contract Documents. Permittee may not assign its rights, duties or obligations hereunder without the prior written consent of Contractor. Contractor may assign its rights under this Agreement upon ten (10) days advance written notice to Permittee, *provided that* Contractor's assignee shall be legally and financially qualified to undertake and timely fulfill Contractor's obligations under this Agreement. Nothing in this Agreement, express or implied, is intended to or shall confer on any person other than the Parties hereto and their respective successors and assigns, any right, remedies, obligations or liabilities under or by reason of this Agreement.

20. **Waiver.** No action or failure to act by Permittee or Contractor shall constitute a waiver of any right or duty afforded any of them under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

21. **Termination.** This Agreement may be terminated by either party should the other party materially breach any provision of this Agreement or should the Asset Purchase Agreement between the parties of even date herewith and pertaining to the Station be terminated under its terms.

Exhibit 5 – NOTICE

Notice to be provided under this Agreement shall be made to the following persons and addresses:

If to
Permittee: **MARY V. GUTHRIE**
2310 Ponderosa Drive, #28
Camarillo, CA 93010
Tel.: 805-377-4433 E-mail:
maryguthrie@hotmail.com

With a
copy to:* John S. Neely, Esq.
Miller and Neely, PC
3750 University Blvd., West – Suite 203
Kensington, MD 20895
Tel: 301-933-6304
Fax: 301-986-4162
Email: johnsneely@yahoo.com

If to
Contactor: **RIVIERA BROADCASTING LLC**
4535 Shetland Avenue
Houston, TX 77027
Attn.: Michael A. Cutchall
Tel: 713-963-0888
Fax: 713-807-0230
E-mail: michael@cutchall.net

With a
copy to:* Lee W. Shubert, L.C.
Sciarrino & Shubert PLLC
5425 Tree Line Drive
Centreville, VA 20120-1676
Tel: 410-935-1440
Fax: 703.991.7120
lee@sciarrinolaw.com

*which shall not constitute notice.

Exhibit 6 – DEFINITIONS

The capitalized terms in this Agreement, unless otherwise defined, shall have the following meaning(s).

1. “**Act**” or “**the Act**” means and refers to the Communications Act of 1934, as amended.

2. “**Affiliate**” or “**Affiliates**” means any entity or person, directly or indirectly, owning or controlling, or that is owned or controlled by, or under common ownership or control (in whole or in part) with Contractor or Permittee, and their respective officers, directors, managers, principals, employees and agents, collectively.

3. “**Alterations**” means any changes, additions, alterations, improvements or modifications to the equipment or facilities for the Station.

4. “**Ancillary Agreements**” means and includes this Agreement, the Asset Purchase Agreement, as well as any other written agreements between Contractor and/or Permittee relating to the Station that taken together constitute and comprise the entire understanding between and among the Parties.

5. “**Budget and Specifications**” means the agreed upon budget and specifications described in **Exhibit 1** attached hereto, as such Budget and Specifications may be amended by mutual agreement of the parties.

6. “**Business Day(s)**” means any calendar day, excluding Saturdays and Sundays, on which federally chartered banks in the city of Phoenix, Arizona, are regularly open for business.

7. “**Capital Expenditures**” means and refers to capital improvements and investments by Permittee respecting facilities installations and/or acquisition of equipment, including transmission equipment, for installation and use in connection with the business and operation of the Station. The amount of such Capital Expenditures shall not exceed the Fund Limit.

8. “**CERCLA**” means the Comprehensive Environmental Response Cleanup and Liability Act of 1980, as amended, 42 U.S.C. § 59.601 *et seq.*

9. “**Closing**” means the performance of all acts, fulfillment of all conditions, and execution of all documents and instruments, including but not limited to the documents referred to in the Purchase Agreement as may be necessary to effectively transfer all the assets and FCC licenses and permits pertaining to the Station from Permittee to Contractor and the consummation of all other transactions contemplated under the Purchase Agreement as of the date set by the Parties for the Closing.

10. “**Consultant(s)**” means Contractor’s principals, officers, directors, or employees, as well as Contractor’s authorized consultants, contractors, subcontractors and agents.

11. “**Contract Documents**” means the Ancillary Agreements, the Modified Permit and all authorizations issued to the Permittee for the Station’s operation and construction, including the Budget and Specifications.

12. “**Contractor**” means **RIVIERA BROADCASTING LLC.**, a Delaware limited liability company.

13. “**Damages**” means all liability, cost and expense (including reasonable attorney’s and consultants fees), actions

claims, damages, penalties, causes of action, and/or proceedings brought by either of the Parties or a third-party for harm arising in connection with the Station or Work under this Agreement.

14. “**Effective Date**” shall mean a date within thirty (30) calendar days of the date the FCC grants to Permittee the Modified Permit.

15. “**FCC**” means the Federal Communications Commission.

16. “**FCC Application**” means that (those) certain Construction Permit/Modification ApplicationS for FM Translator/Booster Station (FCC Forms 349); as amended, submitted by Permittee to the FCC by which Permittee shall seek consent of the FCC to the modification of the Permit materially in accordance with the descriptions and specifications set forth on **Exhibit 3**, hereto.

17. “**Final Order**.” For the purposes of this Agreement, “**Final Order**” means the action of the Commission granting the FCC Application, said action being no longer subject to administrative or judicial review, reconsideration or appeal.

18. “**Fund Limit**” means and refers to an aggregate sum of **TWELVE THOUSAND AND NO/100 U.S. DOLLARS (\$12,000.00)**, which shall be the limit of Contractor’s obligation to fund the Operating Fund. The Contractor’s obligation to maintain the Operating Fund shall not exceed or require Contractor to pay, in the aggregate, more than the Fund Limit.

19. “**Hazardous Materials**” means toxic materials, hazardous wastes, hazardous substances, pollutants or contaminants, asbestos or asbestos-related products, PCB’s, petroleum, crude oil or any fraction or distillate thereof (as such terms are defined in any applicable federal, state or local laws, ordinances, rules and regulations, and including any other terms which are or may be used in any applicable environmental laws to define prohibited or regulated substances).

20. “**Immediately Available Funds**” means cash, a certified bank cashier’s check, or funds immediately available by wire transfer, all in, or payable in, the valid currency and legal tender of the United States.

21. “**Installed Asset(s)**” means any facilities or equipment installed and/or paid for by Contractor pursuant to this Agreement.

22. “**K235CD**” means FM Translator Station K235CB, Chandler, Arizona (FCC Facility ID No. 144641), which is licensed to Contractor. K235CB’s antenna is located on a tower at the Site that bears the FCC Antenna Structure Registration No. 1019338 and has a radiation center of 31 meters above ground level.

23. “**Maintenance Expenses**” means and refers to reasonable and necessary expenses incurred by Permittee for the Work, routine operating or maintenance expenses for the Station, FCC application or filing fees, and/or any Capital Expenditures. For the avoidance of doubt, Maintenance Expenses

may include reasonable expenditures that are necessary to preserve and maintain the Station's broadcast operations and/or keep the Station in compliance with the Rules and Regulations or this Agreement, including the Station's rent and insurance.

24. "**Material**" shall mean or refer to any event or occurrence that necessitates, requires or otherwise causes (i) the expenditure of an aggregate of **TWENTY THOUSAND AND NO/100 U.S. DOLLARS** (\$20,000.00) or more to meet, satisfy or cure damage or an obligation, liability, debt, claim, fine or forfeiture involving the Work.

25. "**Modified Permit**" means those certain changes and modifications to the Permit, which shall be promptly and diligently sought from the FCC by Permittee, to upgrade the facilities for the Station in accordance with the descriptions and specifications set forth on **Exhibit 3**, hereto.

26. "**Operating Fund**" shall mean and refer to that certain fund which shall be established by Contractor and maintained by the Escrow Agent for the payment and satisfaction by the Permittee of Maintenance Expenses (as herein defined). On or before the Commencement Date, Contractor shall make and deliver to the Escrow Agent (as identified in the Escrow Agreement) a threshold deposit of **THREE THOUSAND AND NO/100 U.S. DOLLARS** (\$3,000.00) to establish the Operating Fund. Contractor then shall add **THREE THOUSAND AND NO/100 U.S. DOLLARS** (\$3,000.00) to the Operating Fund for each of the next three (3) consecutive calendar months following the threshold deposit until the amount contributed by the Contractor shall, in the aggregate, total the Fund Limit.

27. "**Parties**" shall mean and refer to Contractor and Permittee, collectively.

28. "**Party**" shall mean and refer to either Contractor or Permittee, as applicable.

29. "**Permit**" means the FCC Construction Permit for the Station, specifically FCC File No. BNPFT-20130822AFY.

30. "**Permittee**" means **MARY V. GUTHRIE**, a California resident.

31. "**Program Tests**" means and refers to the initiation of broadcast service (as delineated in Section 74.14 of the Rules and Regulations) by the Station.

32. "**Proprietary Information**" means, but shall not be limited to, any data (including financial data), lists of actual or

potential customers or suppliers, business, marketing, sales, pricing or advertising plans, policies, practices or information, directly or indirectly relating to the Station, Contractor or Permittee, or Contractor's or Permittee's respective officers, directors, owners and Affiliates, which is not generally known to the public through legitimate origins.

33. "**Purchase Agreement**" means that certain Asset Purchase Agreement between Permittee and Contractor.

34. "**Rules and Regulations**" shall mean the rules of the FCC as set forth in Volume 47 of the Code of Federal Regulations, as well as such other policies of the Commission, as required or permitted by the Act, whether contained in the Code of Federal Regulations, or not, that apply to the Station.

35. "**Site**" shall mean the Tower Site for the Station at the South Mountain Transmitter Site, as specified under the Modified Permit and described on **Exhibit 2**, hereto.

36. "**South Mountain Transmitter Site**" shall mean that certain transmitter site located at the NAD 27 geographic coordinates 30°20'4.8" NL; 112°30'39.5" WL, and includes a tower that bears the FCC Antenna Structure Registration No. 1019338). The South Mountain Transmitter Site is the transmitter location for K235CB.

37. "**Station**" means FM Translator Station K270BZ, Phoenix, AZ (FCC Facility ID No. 152717).

38. "**Tower Site**" means the location specified in the Modified Permit for the transmitter and transmission tower for the Station, as described on **Exhibit 2**, hereto.

39. "**Work**" shall mean all labor, materials and equipment necessary or appropriate for the construction (i) of the facilities described in the Budget and Specifications as authorized in the Modified Permit, and/or (ii) as performed at the Station's Tower Site.

40. **OTHER TERMS.** All terms defined in the other Sections of this Agreement shall have the meaning otherwise ascribed to them in this Agreement.