

K261BA PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (the "Agreement") is entered into as of the ____ day of September 2016, by and between **Down East Communications/CDC/Center for the Performing Arts**, a North Carolina not-for-profit corporation ("Seller") and **Forum Communications Company**, a North Dakota corporation ("Buyer").

WITNESSETH:

WHEREAS, Seller is the licensee of FM broadcast translator station K261BA, Rolla, North Dakota (Facility ID No. 62217) (the "Station"); and

WHEREAS, Seller desires to sell and assign and Buyer desires to purchase and acquire certain assets owned or held by Seller for use in the operation of the Station; and

WHEREAS, the license issued by the Federal Communications Commission ("Commission" or "FCC") for the operation of the Station may not be assigned to Buyer without the prior written consent of the Commission;

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained herein, the parties do hereby agree as follows:

1. SALE OF ASSETS AND ASSIGNMENT OF LICENSES

At the Closing, and subject to the provisions of Paragraph 2 hereof, Seller shall sell or assign and transfer to Buyer and Buyer shall purchase from Seller the following assets ("Assets"), free and clear of liens, encumbrances, and other security interests except as specifically provided herein:

A. **Licenses and Authorizations**: The license issued by the FCC (FCC file number 19821029IF, as renewed by BRFT-20121128ANM, to expire April 1, 2021), including without limitation the right to the use of the Station's call sign, together with any other authorizations or permission issued by any other governmental agencies and that are associated exclusively with the Station, and all applications for modification, extension or renewal thereof pending on the Closing Date (the "Licenses").

B. **Intangible Personal Property**: All good will, trademarks, service marks, copyrights, trade names, common law property rights and all other intangible personal property owned by Seller and intended for use by it exclusively in connection with the operation of the Station (the "Intangible Property").

C. **Records**: Such of Seller's files, warranties, technical data, reports and other records relating exclusively to the Station as are customarily provided in FM translator acquisitions or as Buyer may reasonably request (the "Records").

2. ASSETS EXCLUDED

It is understood and agreed that the Assets purchased pursuant to this Agreement shall not include (a) the transmitter, antenna and any other equipment, it being understood that Buyer shall provide such equipment as may be needed to operate the Station following the modification contemplated in Section 12 below; (b) the transmitter site used in the current operation of the Station or any right to the use thereof, it being understood that Buyer intends to relocate the Station to a site of its choice and in the meantime shall either enter into its own arrangements for the current transmitter site or cease operation upon consummation of the transaction contemplated by this Agreement; (c) all contracts and agreements associated with the Station; (d) Seller's cash, bank accounts, accounts or notes receivable and investments; and (e) Seller's tax and corporate records, together with all records that do not relate exclusively to the Station.

3. **PURCHASE PRICE AND TERMS**

The purchase price for the Assets being purchased by Buyer hereunder (the "Purchase Price") is Thirty Thousand Dollars (\$30,000). Upon execution of this Agreement, Buyer shall pay Seller One Thousand Five Hundred Dollars (\$1,500) (the "Deposit"), which shall be applied against the Purchase Price upon consummation of this Agreement as provided in paragraph 14 (the "Closing"), refunded to Buyer only if Seller alone is in default of this Agreement, and otherwise retained by Seller. The remainder of the Purchase Price shall be due and payable at the Closing by wire transfer of immediately available funds or such other form of cash or cash equivalent as Seller may reasonably request.

4. **PRORATIONS AND ADJUSTMENTS**

All taxes, prepayments (to the extent Buyer obtains the asset for which such prepayment was made), deposits and any income and operating expenses of the Station shall be prorated between Buyer and Seller as of 12:01 a.m. on the Closing Date. Insofar as feasible, proration under this paragraph shall be determined and paid on the Closing Date as an adjustment to the Purchase Price, with a final accounting of prorated items, and the sum due from one party to another pursuant to this proration paid, within sixty (60) days after the Closing Date.

5. **EXPENSES**

FCC filing fees for the application described in Paragraph 7 hereof, together with the cost of required public notices, recording fees, documentary stamp taxes, revenue stamps and all other similar charges on conveyances from Seller to Buyer all will be paid by Buyer. All other expenses incurred with respect to the preparation and implementation of this Agreement and the transactions contemplated hereunder shall be paid by the party incurring the same.

6. **ASSUMPTION OF CERTAIN LIABILITIES**

At the Closing Buyer shall not assume responsibility for any of Seller's liens, taxes, debts, accounts payable, contracts or employment-related obligations, including severance pay, health insurance or retirement plans.

7. **FILING OF FCC APPLICATION**

Buyer and Seller agree to have their respective portions of the FCC license assignment application on FCC Form 345 (the "Application"), prepared and submitted as soon as practicable, but in no event later than five (5) business days, after the signing of this Agreement.

8. **TERMINATION**

A. If the Commission has not granted the Application within nine months after the Application is filed, then either Buyer or Seller may terminate this entire Agreement upon written notice to the other, provided that the party seeking to terminate is not in default hereunder.

B. Either party may terminate this Agreement if the other shall be in material breach hereof and if the said breach shall not have been cured within ten (10) days of written notice thereof by the party seeking to terminate, **provided, however**, that if any such breach is not reasonably susceptible of being cured within ten (10) days, then the party in breach shall have undertaken to cure the breach with all reasonable diligence and shall have cured the breach as promptly as is reasonably practicable.

9. **REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller makes the following representations and warranties, all of which have been relied upon by Buyer in entering into this Agreement and, except as specifically otherwise provided, all of which shall be true and correct on the Closing Date:

A. **Organization**: Seller is a not-for-profit corporation duly organized, validly existing, and in good standing under the laws of the State of North Carolina, is authorized to do business in the State of North Dakota, and has full power and authority to enter into and perform this Agreement.

B. **Authorization**: The execution, delivery and performance of this Agreement have been duly authorized by the Seller, and constitute a valid and binding agreement of Seller, enforceable in accordance with its terms.

C. **No Contravention**: The execution, delivery and performance of this Agreement by Seller will not violate any provision of its organizational documents and will not result in the breach of, or constitute a default under, or violate any provision of, any agreement or other instrument to which Seller or any of its principals is a party or by which it or they or any of the Assets is bound or affected.

D. **Licenses**: The Licenses are all the authorizations issued by the Commission and other governmental agencies, together with any applications pending for authorizations, needed to operate the Station in its present manner, and they are in full force and effect.

E. **Compliance with Laws; Litigation:** There is no judgment outstanding and, to the best of Seller's knowledge, no litigation, proceeding or investigation of any nature (other than that intended to affect substantial segments of the industry as a whole) pending or threatened which is likely to materially and adversely affect the operation of the Station, the use by Buyer of the Assets, or Seller's ability to timely consummate all of the transactions contemplated herein.

10. **COVENANTS OF SELLER**

A. **Negative:** Between the date hereof and the Closing Date or earlier termination of this Agreement, Seller will not sell, assign, lease, convey, or otherwise transfer or dispose of any of the Assets, whether now owned or hereafter acquired other than in the ordinary course of business, nor create any lien or encumbrance upon any of the Assets.

B. **Affirmative:** Pending the Closing Date, Seller will:

(i) Give to Buyer, its counsel, engineers, accountants and other authorized representatives, reasonable access during normal business hours to all of the properties, premises, books and records pertaining to the Station for the purposes of inspection;

(ii) Promptly notify Buyer of any unusual or material developments with respect to the Station; and remove any and all violations of Commission rules or regulations which come to its attention or assume responsibility for the costs of removing same, including the payment of any fines that may be assessed for any such violation; and

(iii) Unless otherwise authorized by Buyer, operate the Station in the ordinary course and maintain the Licenses in full force and effect.

11. **REPRESENTATIONS, WARRANTIES AND COVENANTS OF BUYER**

Buyer makes the following representations, warranties and covenants, all of which have been relied upon by Seller in entering into this Agreement and, except as specifically otherwise provided, all of which shall be true and correct on the Closing Date:

A. **Organization:** Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the State of North Dakota and has full power and authority to enter into and perform this Agreement.

B. **Authorization:** The execution, delivery and performance of this Agreement have been duly authorized by Buyer, and constitute a valid and binding Agreement of Buyer, enforceable in accordance with its terms.

C. **No Contravention:** The execution, delivery and performance of this Agreement by Buyer will not violate any provision of its organizational documents and will not result in the breach of, or constitute a default under, or violate any provision of, any agreement or other instrument to which Buyer or any of its principals is a party or by which it or they is bound or affected.

D. **Qualification:** Buyer is fully qualified, legally and financially, to become the licensee of the Station and to timely consummate all of the transactions contemplated by this Agreement.

12. **PERMIT MODIFICATION**

Seller acknowledges that Buyer intends to utilize the Station as a translator for its AM station WDAY(AM), Fargo, North Dakota. Within five (5) days following execution of this Agreement, Buyer shall file a minor change application to specify a new site and/or channel for the Station consistent with the parameters set out in the FCC's *Revitalization of the AM Service*, FCC 15-142, released October 23, 2015 and the FCC's *Public Notice*, DA 1491, released December 23, 2015 (the "Modification"). Buyer shall prosecute the Modification diligently and in good faith. Buyer shall be responsible for the entire cost of preparing, filing and prosecuting the Modification, for which Seller shall extend reasonable cooperation. In furtherance thereof, Seller shall, within one (1) day of execution of this Agreement, associate Buyer's FCC Registration Number with the Station in the FCC's CDBS filing system. It is expressly agreed that grant of the Modification shall be a condition to Buyer's obligation to timely consummate the transaction contemplated by this Agreement.

Exhibit 1 to this Agreement is Seller's consent, given pursuant to Section 73.3517(a) of the Commission's Rules, for Buyer to file the Modification prior to grant of the Application.

13. **CONTROL OF STATION**

Nothing contained in this Agreement shall be construed as giving Buyer any right to directly or indirectly supervise or direct the operation of the Station prior to the Closing. Such operation shall be the sole responsibility of Seller. Effective on the Closing Date and thereafter, Seller shall have no control over, nor right to intervene or participate in, the operation of the Station.

14. **RISK OF LOSS**

The risk of loss or damage to any of the Assets shall be upon Seller prior to the Closing, and thereafter upon Buyer. In the event of such loss or damage prior to the Closing, Seller shall promptly replace, repair or restore any such damaged Assets as promptly as practicable and apply the proceeds of, or any claim for any loss payable under, any insurance policy with respect thereto to repair, replace, or restore such lost or damaged assets.

15. **CLOSING DATE AND PLACE**

The date of the Closing (the "Closing Date") and time shall be fixed by Buyer by giving at least five (5) days' written notice thereof to Seller. Unless extended by mutual written consent of Buyer and Seller, the date of Closing shall be within ten (10) days after the date upon which the FCC shall have granted the Application, provided, however, that if a petition to deny or informal objection shall have been filed against the Application, then, at the option of either Buyer or Seller, the Closing shall be within ten (10) days of the date that FCC grant of the Application shall have become final (*i.e.*, no longer subject to appeal or review by the Commission or any court of competent jurisdiction). The Closing shall take place at the Seller's offices or at such other location or in such other manner as the parties may mutually agree, including an exchange by email or fax of scans of executed counterparts of mutually-acceptable documents. At the Closing, (a) Seller shall deliver to Buyer such bills of sale, assignments and other instruments of conveyance transferring title of the Assets as Buyer may reasonably request and (b) Buyer shall pay the Purchase Price to Seller by wire transfer of immediately available funds or in such other form of cash or cash equivalent as Seller may reasonably request.

16. **REMEDIES UPON TERMINATION OR DEFAULT**

If this Agreement is terminated due to no fault of either Buyer or Seller, then neither party shall have any liability to the other. If Buyer has the right to terminate this Agreement due to a material default of Seller (other than a default that is caused by a default of the Buyer) then Buyer may seek a decree of specific performance, it being agreed by both Buyer and Seller that the Assets to be conveyed hereunder are unique and irreplaceable, and that monetary damages alone may not suffice to compensate Buyer for the loss of an opportunity to acquire the Station on the terms set forth herein. If this Agreement is terminated due to any reason other than a material default of the Seller, then Seller shall retain the Deposit.

17. **INDEMNIFICATION**

Seller shall indemnify, defend, and hold Buyer harmless against all claims, demands and legal actions and will reimburse Buyer for any damages (including legal fees incurred with respect to same) resulting from, or arising out of, the material breach by Seller of any of its representations, warranties or covenants set forth herein. Buyer shall indemnify, defend and hold Seller harmless against all claims, demands and legal actions, and will reimburse Seller for any damages (including legal fees incurred with respect to same) resulting from, or arising out of, the material breach by Buyer of any of its representations, warranties or covenants set forth herein. Should any claims covered by the foregoing provisions be asserted against either party, the party being charged shall notify the other promptly and give it an opportunity to defend the same; the parties shall extend reasonable cooperation to each other in connection with such defense.

18. **SURVIVAL**

The representations, warranties, covenants, and agreements contained herein and in any certificate or other instrument delivered pursuant hereto shall be deemed and construed to be continuous and shall survive the Closing hereunder for a period of six (6) months.

19. **BROKER/FINDER**

Buyer and Seller hereby mutually represent that (a) there are no finders, consultants or brokers involved in this transaction other than Roger Rafson /CMS Station Brokerage, Inc., whose fee shall be the sole responsibility of Seller, and (b) neither Seller nor Buyer has agreed to pay any other brokers', finders' or consultants' fees in connection with this transaction.

20. **NOTICES**

All necessary notices, demands and requests shall be deemed duly given if mailed by registered or certified mail, postage prepaid, addressed as follows:

Seller: Down East Communications/CDC/Center for the Performing Arts
233 Middle Street, Suite 207
New Bern, North Carolina 28560
C/O: Dr. Ronald Benfield

Buyer: Forum Communications Company
301 South 8th Street
Fargo, North Dakota 58103
Attn: William C. Marcil, Jr., President

21. **CONSTRUCTION**

This Agreement shall be construed and enforced in accordance with the laws of the State of North Dakota. If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and to this end only the provisions of this Agreement are declared severable.

22. **ASSIGNMENT AND BENEFIT**

This Agreement is not assignable by either Buyer or Seller without written consent of the other. This Agreement and all of the obligations set forth herein shall be binding upon the parties and their respective heirs, assigns and successors.

23. **COOPERATION**

Each party hereto agrees to perform such further acts and to execute and deliver such further documents as may be necessary or desirable to effectuate the purposes of this Agreement.

24. **TIME OF ESSENCE**

Time is of the essence with respect to every provision of this Agreement.

25. **ENTIRE AGREEMENT**

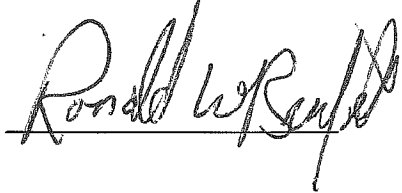
This Agreement embodies the entire agreement among the parties and supersedes all prior agreements and understandings among the parties. No attempted change, termination or waiver of any of the provisions hereof shall be binding except by a written instrument signed by the party against which the same is sought to be enforced.

26. **EXECUTION IN COUNTERPARTS**

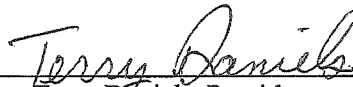
This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

EXECUTED on the day first above written.

ATTEST:



**DOWN EAST COMMUNICATIONS/CDC/CENTER
FOR THE PERFORMING ARTS**

By 
Terry Daniels, President

ATTEST:

FORUM COMMUNICATIONS COMPANY

By _____
William C. Marcil, Jr., President

25. **ENTIRE AGREEMENT**

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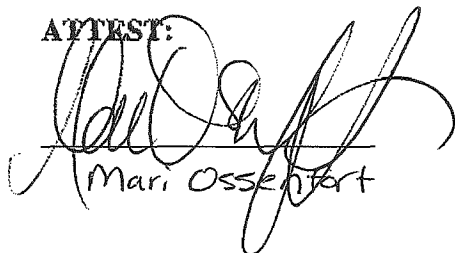
EXECUTED on the day first above written.

ATTEST:

**DOWN EAST COMMUNICATIONS/CDC/CENTER
FOR THE PERFORMING ARTS**

By _____
Terry Daniels, President

ATTEST:


Mari Ossentart

FORUM COMMUNICATIONS COMPANY

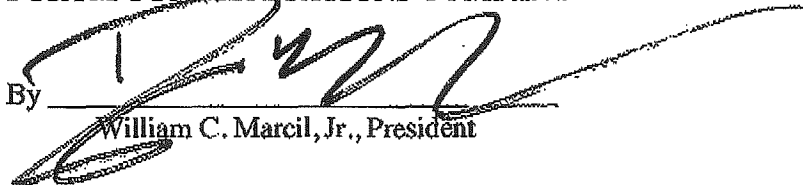
By 
William C. Marcil, Jr., President

EXHIBIT 1

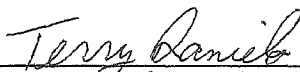
_____, 2016

William C. Marcil, Jr.
Forum Communications Company
301 South 8th Street
Fargo, North Dakota 58103

Dear Mr. Marcil:

Pursuant to Section 73.3517(a) of the Rules and Regulations of the Federal Communications Commission ("FCC"), Down East Communications/CDC/Center for the Performing Arts hereby gives its consent to the filing with the FCC by Forum Communications Company of an application to modify the facilities of FM translator Station K261BA, Rolla, North Dakota, the construction authorized as a result of such application to be contingent upon grant of a separate application for FCC consent to an assignment of the construction permit for K261BA to Forum Communications Company.

Very truly yours,


Name: Terry Daniels
Title: President