

## CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (the "Agreement") is entered into as of this 5th day of December, 2003, by and between PAPPAS TELECASTING COMPANIES, a Nevada corporation, or its assignee ("Contractor"), and Caroline K. Powley, an individual resident of the State of Florida ("Permittee").

### WITNESSTH

WHEREAS, Permittee holds a construction permit issued by the Federal Communications Commission ("FCC") for new digital television station to operate on DTV Channel 56, Des Moines, Iowa (the "Station"), FCC File No. BNPCDT-19960117KE (the "Permit");

WHEREAS, Permittee and Contractor have cooperated in the preparation and filing with the FCC an application to modify the Permit (the "Permit Modification") with the intent to prosecute such application to grant as soon as possible (the "Modified Permit").

WHEREAS, Permittee and Contractor have entered into a Letter Agreement dated September 25, 2003 (the "Purchase Agreement"), under which Contractor or its assignee has agreed to purchase the Permit, subject to the prior approval of the FCC; and

WHEREAS, Permittee desires to retain Contractor to specify the materials and equipment required to construct the facilities proposed in the Modified Permit, and to undertake, following consultation with Permittee, such construction.

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

### **SECTION 1. DEFINITIONS.**

In addition to the terms that are elsewhere defined in this Agreement, the following terms shall have the respective meanings hereinafter set forth:

A. "Budget and Specifications" shall mean the preliminary budget and specifications described in Exhibit A attached hereto, as such Budget and Specifications may be amended in accordance with Section 5 of this Agreement.

B. "Contract Documents" shall mean this Agreement, the Purchase Agreement, the Permit, the Permit Modification, the Modified Permit (when issued) and all other authorizations issued to the Permittee for the Station's construction and operation, and the Budget and Specifications.

C. "Work" shall mean the procurement and implementation of all contracts, labor, materials and equipment necessary or appropriate for the construction of the Station described in the Budget and Specifications as authorized in the Modified Permit.

## **SECTION 2. THE WORK.**

A. Contractor agrees to do the following at Contractor's expense:

(i) In consultation with Permittee, specify for the purchase or lease by Contractor of the 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 Permit; and

(ii) With the concurrence of the Permittee, construct and/or install the facilities described in the Budget and Specifications in accordance with the Modified Permit and all applicable zoning, building or other governmental laws, ordinances or regulations.

(iii) Permittee and Contractor shall share equally the obligation for the cost of the preparation, filing and prosecution of the Permit Modification (including but not limited to engineering services, and FCC application filing fees.)

B. Permittee has done or agrees to do the following:

(i) Maintain in effect the Permit (Exhibit B) until the grant of the Modified Permit and then to maintain in effect the Modified Permit;

(ii) If the Closing under the Purchase Agreement has not yet occurred, prepare and timely file with the FCC an application for license for the constructed facilities in accordance with the rules and regulations of the FCC;

(iii) Cooperate with Contractor in timely filing and obtaining any zoning, building and other permits that are required in connection with the Budget and Specifications and the Work and timely execute any necessary documents and agreements provided by Contractor in accordance with his obligations hereunder; and

(iv) Obtain and maintain any real property interests, including leases, necessary for construction of the Station's transmission facilities as specified in the Permit Modification, and obtain and maintain all governmental approvals for the Station's tower site as specified in the Permit Modification, including FAA and state and local zoning and building permits.

## **SECTION 3. COMPLETION OF THE WORK.**

A. The Work shall commence within 30 days of the grant and finality of the Permit Modification, and shall be substantially completed as promptly as reasonably practicable; provided, however, that (i) Contractor shall be entitled to delay commencement of construction until the grant of the Permit Modification, and (ii) 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, delays caused by suppliers of goods, services

or equipment from vendors, failure of power, governmental actions or inactions, riots, insurrection, war, terrorist acts, weather or other reasons beyond the control of Contractor.

B. 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 begin operating pursuant to Program Test Authority under FCC rules using the facilities proposed in the Modified Permit as modified by the Permit Modification and (ii) all permits, modifications of permits, authorizations and licenses (other than a covering license issued by the FCC) necessary to operate such facilities have been obtained. Any Work required by the Contract Documents which 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.

#### **SECTION 4. COST OF THE WORK.**

Except as expressly excluded hereunder, Contractor shall be responsible for the entire cost of the Work.

#### **SECTION 5. BUDGET.**

Permittee and Contractor acknowledge and agree that the Budget and Specifications represent the estimated cost of the Work. Promptly after the date hereof, Contractor shall obtain firm bids from responsible manufacturers, suppliers, and contractors approved by Permittee for the performance of the Work or portions thereof, and shall supply copies of all bids to Permittee. Upon receipt of the bids and upon the agreement by Permittee and Contractor to accept any such bid(s), Contractor shall accept the bid(s) and the Budget and Specifications shall be adjusted to conform to the bid(s). Contractor shall keep customary, reasonably detailed records of the actual costs of the Work and make such records available to Permittee upon request.

#### **SECTION 6. CONTRACTOR'S CONSTRUCTION OBLIGATIONS.**

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

B. 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, but if responsible manufacturers, suppliers, and contractors approved by Permittee or Permittee's insurer have provided certificates of insurance or bonds or performance bonds in reasonable amounts approximating the cost of the goods and services, which costs were approved in accordance with Section 5, then the condition and duty of the first phrase hereof shall be deemed to have been satisfied and Permittee shall only look to such insurance or bonds or performance bonds for any loss, damage or other claims whatsoever.

C. Unless otherwise provided in the Contract Documents, Contractor shall provide 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.

D. Contractor warrants to Permittee that all materials and equipment furnished under this Contract will be new, unless otherwise specified in Exhibit A, and that all Work will be of good quality, free from material faults and in conformance with the Contract Documents.

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

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

### **SECTION 7. SUBCONTRACTORS.**

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.

### **SECTION 8. PROTECTION OF PERSONS AND PROPERTY.**

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

- (i) all individuals employed to perform the Work;
- (ii) all 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
- (iii) other property at the site or adjacent thereto.

B. 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.

### **SECTION 9. INSURANCE.**

A. Contractor shall purchase and maintain or cause to be purchased and maintained such insurance as will protect Contractor and Permittee 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:

- (i) claims under workmen's compensation, disability benefit and other similar employee benefit acts;

(ii) claims for damages because of bodily injury, occupational sickness or disease, or death;

(iii) claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or (2) by any other person;

(iv) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property; and

(v) claims for damages because of bodily injury or death or any property damage arising out of the ownership, maintenance or use of any motor vehicle in respect of the Work.

B. The insurance required by this Section shall be written for not less than the limits of liability reasonably agreed to by Contractor and Permittee or required by law, whichever is greater.

C. Certificates of Insurance acceptable to Permittee and Contractor shall be delivered to Permittee upon request prior to commencement of the Work. 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.

D. Contractor shall also purchase and maintain property insurance upon the entire Work to the full insurable value thereof. This insurance shall insure against the perils of fire and extended coverage, shall include "all risk" insurance for physical loss or damage including, without duplication of coverage, theft, vandalism and malicious mischief and shall provide that all proceeds from such insurance shall go to Contractor.

## **SECTION 10. DAMAGES.**

In the event of a default by Contractor of its obligations under this Agreement or the failure of Contractor to complete the Work, Contractor shall not be liable to Permittee for any consequential damages as a result of such failure or delay. The sole liability of Contractor to Permittee shall be for the full cost and expense of completing the Work in accordance with the Contract Documents and the Budget and Specifications.

## **SECTION 11. 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 to Contractor, or its assignee, (b) a termination of the Purchase Agreement in accordance with the terms thereof other than as provided in (a) above. In the event this Agreement terminates as a result of a termination of the Purchase Agreement arising from a breach by Permittee then Permittee shall (A) reimburse Contractor for all costs incurred in the Work up to and as of the date of termination as evidenced by expense documentation maintained by Contractor within

sixty (60) days of the effective date of the termination, provided that all amounts due under the Contract Documents shall bear interest at the Prime rate plus 3% from and after the first thirty (30) days, and (B) Permittee shall assume and become solely responsible for all obligations remaining under any contracts entered in to by Contractor in connection with its obligations hereunder from and after the effective date of the termination. In the event this Agreement is terminated as a result of a termination of the Purchase Agreement arising from a breach by Contractor, then Permittee shall be entitled to the completion of the Work to be done , as its sole remedy hereunder.

## **SECTION 12. MISCELLANEOUS PROVISIONS.**

A. This Agreement shall be governed by the laws of the State of Iowa applicable to contracts made and to be performed there, without reference to the principles of the conflicts of law.

B. 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.

C. 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.

D. All notices, demands and requests required or permitted to be given under the provisions of this Agreement shall be (i) in writing, (ii) delivered by personal delivery or sent by commercial delivery service or certified mail, return receipt requested, (iii) deemed to have been given on the date of personal delivery, the date set forth in the records of the delivery service or on the return receipt, and (iv) addressed as follows:

If to Permittee:

Caroline K. Powley  
9279 Dutch Hill Road  
West Valley, NY 14171  
Telecopy: 850-939-9495

With a copy to:

Fletcher Heald & Hildreth, PLC  
1300 N. 17<sup>th</sup> Street, Suite 1100  
Arlington, VA 22209  
Telecopy: (703) 812-0486  
Vincent J. Curtis, Jr., Esq.

If to Contractor:

Pappas Telecasting Companies

500 S. Chinowth Road  
Visalia, CA 93277  
Telecopy: (559) 733-7878  
Attn: Harry J. Pappas

With a copy to:  
Fletcher Heald & Hildreth, PLC  
1300 N. 17<sup>th</sup> Street, Suite 1100  
Arlington, VA 22209  
Telecopy: (703) 812-0486  
Attn: Kathleen Victory, Esq.

or to any such other or additional persons and addresses as the parties may from time to time designate in a writing delivered in accordance with this Section 12.D.

E. 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.

F. 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.

G. Permittee's and Contractor's respective obligations 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.

H. All of the equipment and other material purchased or contracted for in connection with the Work shall, unless this Agreement is terminated as provided in Section 11(a) above, be and remain the property of Contractor, and no Permittee lien or other security interest running to Contractor shall be created or exist under this Agreement or otherwise. Notwithstanding the foregoing, Permittee hereby acknowledges and consents to Contractor's pledging this Agreement to its lenders and granting its lender a lien and security interest in this Agreement and any of the equipment or other material purchased or contracted for in connection with the Work, and Permittee agrees to cooperate with Contractor and to execute such lender lien and security documents reflecting same, if any, as Contractor's lenders may require. Contractor certifies that it will provide in its loan agreement that if this Agreement is terminated as provided in Section 11(a) above, the lender shall release its lien on any equipment or other material purchased or leased in connection with the Work upon reimbursement by Permittee to Contractor or its lender of the costs of the Work and the assumption by Permittee of any outstanding contract obligations in connection with the Work as provided herein and the concurrent unconditional written release by third parties of any obligations of Contractor to any such third parties.

I. In the event there is a denial of the Assignment Application resulting from the qualifications of the Contractor under the ownership rules of the Commission, then the Contractor shall assign its rights and obligations hereunder to a third party who will be fully qualified under the rules and policies of the Commission.

**SECTION 13. 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.

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**WHEREFORE,** The parties, in return for the promises and covenants recited above, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, have caused this Agreement to be executed as of the date written above.

**PERMITTEE:**

Caroline K. Powley

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**CONTRACTOR:**

Pappas Telecasting Companies

By: \_\_\_\_\_  
Harry J. Pappas, Chairman