

## **Asset Purchase Agreement**

This **Asset Purchase Agreement**, dated as of April 8, 2016 (this "**Agreement**"), is between **Edgewater Broadcasting, Inc.**, an Idaho corporation with offices at 160 Gooding Street West, Twin Falls, Idaho 83301 ("**Seller**"), and **Lotus Sacramento Corp.**, a California corporation with offices at 3301 Barham Boulevard, Los Angeles, California 90068 ("**Buyer**"). Capitalized terms used herein and not otherwise defined have the meanings set forth in Section 8.01.

### **Recitals**

A. Seller holds or is acquiring FCC Construction Permit BNPFT-20130830ASN for the new and unbuilt FM Translator Station K282BK (the "**Translator**"), Channel 282 in Placerville, California, FCC Facility Identification # 144146 (the "**Permit**").

B. The Permit will expire on January 16, 2017, and Buyer may seek a waiver to extend the construction deadline.

C. Seller and Buyer intend to modify the Permit to cover a specific change in tower location and channel for serving Sacramento, California under the Second FM Translator Filing Window for AM licensees announced in FCC Public Notice DA 1491 (the "**Second Filing Window**").

D. The Permit assignment and modifications contemplated hereby are subject to the approval of the Federal Communications Commission (the "**FCC**").

E. Seller is working with a third party development group to remove a conflicting Low Power FM application (the "**LPFM Application**") to permit the relocation and modification of the Translator in compliance with Buyer's specifications (the "**Modification**").

F. The coordinated withdrawal of the LPFM Application, including the required statement and certification that the applicant has not received any consideration other than legitimate and prudent expenses related to the prosecution of the LPFM Application (the "**Withdrawal**"), is subject to FCC approval.

G. Under the terms and subject to the conditions set forth in this Agreement, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Permit.

### **Agreement**

In consideration of the above premises, which are incorporated into this Agreement, the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which the parties hereto acknowledges, Buyer and Seller, intending to be legally bound, hereby agree as follows.

#### **Article 1: Purchase of Construction Permit**

1.1. **Construction Permit**. On the terms and subject to the conditions hereof, at the Closing Seller will sell, assign, transfer, convey and deliver to Buyer, and Buyer will purchase and acquire from Seller, Seller's entire right, title and interest in and to the Permit, including any renewals or

modifications thereof between the date hereof and Closing. The Permit will be transferred to Buyer free and clear of Liens.

1.2. No Assumption of Obligations. Buyer is not assuming any obligations of Seller.

1.3. Purchase Price. Buyer will pay Seller a purchase price of \$100,000 (the "Purchase Price"), by wire transfer of immediately available funds at Closing.

1.4. Closing. The Closing will take place on a date that is on or before the fifth Business Day after the date on which all the conditions set forth in Articles 4 and 5 are satisfied or waived, or such other date that the parties mutually may designate.

## Article 2. Tower; FCC Matters.

2.1 Tower Designation. Buyer will use commercially reasonable efforts to identify an antenna structure acceptable to Buyer, in its sole discretion, in the Sacramento, California area (the "Tower"), to operate the Translator on channel 284 (the "Channel"), for the primary Class B AM KMJE 890 AM.

2.2 Notice to FAA. At the Tower owner's request, Buyer and Seller will assist the Tower owner with filing an application to add the transmitting frequency of the Translator to the Tower and addressing any electromagnetic interference issues the FAA raises.

2.3 Assignment Application. As soon as possible, but in no event later than the opening of the Second Filing Window Buyer and Seller will file an application with the FCC (the "FCC Assignment Application") requesting FCC consent to the assignment of the Permit to Buyer. Buyer and Seller will diligently prosecute the FCC Assignment Application and otherwise use their commercially reasonable efforts to obtain the FCC Assignment Consent as soon as possible.

2.4 Modification Applications. Promptly after the execution and delivery of this Agreement, Buyer and Seller will begin to work together to prepare one or more applications for minor modification of the Permit (collectively, the "Modification Application"), each in form and substance acceptable to Buyer, in its sole discretion, in the Second Filing Window to eventually locate the Permit to the Tower and to operate the Translator on the Channel, as contemplated in Section 2.1. The Modification Application will be filed in coordination with the Withdrawal, and simultaneously with the FCC Assignment Application.

2.5 License to Cover Application. As soon as possible after the FCC Assignment Consent and the FCC's grant of the Modification Application become Final, Buyer and Seller will work together to file an Application (the "License Application") for a License to Cover the Translator (the "License to Cover").

2.6 Cooperation; Costs. Buyer and Seller will notify each other of all documents filed with or received from any Governmental or Regulatory Agency with respect to the Permit, this Agreement or the transactions contemplated hereby. Buyer and Seller will furnish each other with such information and assistance as the other reasonably may request in connection with their preparation of any Governmental or Regulatory Authority filing hereunder. Each party will bear its own costs in the preparation of each FCC Application before its tender to the FCC, and each will pay one-half of the

required FCC filings fees. Buyer will pay all engineering costs relating to the Modification. Each party will prosecute the FCC Applications diligently and will use commercially reasonable effort to obtain the consent of the FCC as expeditiously as possible.

2.7 Control of Translator Pending Closing. Notwithstanding anything herein to the contrary, at all times, Seller will have control over the Translator, including the absolute rights to review and reject any material to be transmitted over its facilities which Seller, in its sole discretion, deems undesirable or inappropriate.

Article 3: Representations, Warranties And Covenants.

3.1 (a) Each party hereto represents, warrants, and covenants to the other that (a) it has the full right and legal authority to enter into and fully perform this Agreement, and all other agreements and instruments to be executed and delivered by such party under this Agreement (the "Ancillary Agreements") in accordance with the terms and conditions hereof and thereof; and (b) the execution, delivery and performance of this Agreement does not and will not, and when executed and delivered, the Ancillary Agreements will not, violate or cause a breach of any other agreements or obligations to which it is a party or by which it is bound. The execution, delivery and performance of this Agreement and the Ancillary Documents do not and will not conflict with any order of any Governmental or Regulatory Authority, or any agreement or other instrument by which such party or its assets are bound.

(b) Seller represents, warrants and covenants that (i) there is no judgment or decree outstanding, or Action or Proceeding pending or threatened, which adversely and materially affects Seller's right, title or interest in or to the Permit, or Seller's power, right, authority or ability to enter into this Agreement or to carry out the transactions contemplated hereby, or which would materially prevent or impair Buyer's use of the Permit, (ii) Seller holds the License free and clear of any conditions or restrictions other than as presently set forth on the face of the Permit, and (iii) at Closing, Seller will transfer good title to the Permit, free and clear of all Liens, it being understood that the Act limits such title.

3.2 Covenant. Between the date hereof and Closing, except as permitted by this Agreement or with the prior written consent of Buyer, which will not be unreasonably withheld, delayed or conditioned, Seller will (a) not modify, and in all material respects maintain in full force and effect, the Permit, and (b) comply with all Laws, including the Act, and FCC rules, regulations and policies, relating to Seller's ownership and use of the Permit.

Article 4: Seller Closing Conditions. The obligation of Seller to consummate the Closing hereunder is subject to satisfaction, at or before Closing, of each of the following conditions (unless waived in writing by Seller):

4.1. Representations and Covenants. The representations and warranties of Buyer made in this Agreement will be true and correct in all material respects as of the Closing Date, except for changes permitted or contemplated by the terms of this Agreement, and the covenants and agreements to be complied with and performed by Buyer at or before Closing will have been complied with or performed in all material respects.

4.2. Proceedings. Neither Seller nor Buyer will be subject to any order of any Governmental or Regulatory Authority restraining or prohibiting the consummation of the transactions contemplated hereby.

4.3. FCC Authorization. The FCC will have granted the FCC Assignment Consent and it will have become Final.

4.4. Deliveries. Buyer will have complied with its obligations set forth in Section 6.2.

Article 5: Buyer Closing Conditions. The obligation of Buyer to consummate the Closing hereunder is subject to satisfaction, at or before Closing, of each of the following conditions (unless waived in writing by Buyer).

5.1. Representations and Covenants. The representations and warranties of Seller made in this Agreement will be true and correct in all material respects as of the Closing Date, except for changes permitted or contemplated by the terms of this Agreement, and the covenants and agreements to be complied with and performed by Seller at or before Closing will have been complied with or performed in all material respects.

5.2. Proceedings. Neither Seller nor Buyer will be subject to any order of any Governmental or Regulatory Authority restraining or prohibiting the consummation of the transactions contemplated hereby.

5.3. FCC Authorization. The FCC will have granted each of the following, on terms acceptable to Buyer in its sole discretion (the "FCC Consents"), and each will have become Final:

- (a) the FCC Assignment Consent; and
- (b) the Modification.

5.4. Broadcast Operation. The FCC will have accepted the License Application for filing, and granted temporary program authority to the Translator in connection therewith, and the Translator will have engaged in broadcast operations for at least 60 days (such 60-day period, the "Initial Broadcast Period").

5.5. Deliveries. Seller will have complied with its obligations set forth in Section 6.1.

Article 6: Closing Deliveries

6.1. Seller Documents. At Closing, Seller will deliver or cause to be delivered to Buyer a Bill of Sale and an assignment of the FCC authorizations assigning the Permit (as it may have been modified) from Seller to Buyer.

6.2. Buyer Documents. At Closing, Buyer will deliver or cause to be delivered to Seller the balance of the Purchase Price in accordance with Section 1.3.

Article 7: Indemnification and Termination.

7.1 Indemnification. Each party will indemnify, defend and hold harmless the other party, and its officers, owners and affiliates, from and against any liability, loss, damage, or injury, together with all reasonable costs and expenses relating thereto, including reasonable legal and accounting fees and expenses actually incurred, arising from such party's misrepresentation or breach of representation (whether due to commission, omission or otherwise), warranty or covenant set forth herein. If any Action or Proceeding is commenced against, or any claim or demand is asserted against, a party to this Agreement in respect of which that party proposes to demand indemnification hereunder, notification will be given to that effect to the indemnifying party, which will assume the entire control of the defense thereof, subject to the right of the notifying party to participate (at its expense and with counsel of its choice) in the defense thereof; provided, however, that the indemnities' control of the defense of any such Action or Proceeding will not delay the timely defenses thereof. This provision will survive Closing and termination of this Agreement.

7.2 Termination. This Agreement may be terminated before Closing, without cost or penalty:

- (a) by the mutual written consent of Seller and Buyer;
- (b) by either party upon notice to the other party at any time after the second anniversary of the date hereof if the Closing has not yet occurred;
- (c) by Buyer, (A) if the Modification Application is mutually exclusive with another FM translator modification application, and the parties hereto do not resolve such conflict by entering into a settlement agreement with the applicant of the conflicting application, (B) if the FCC dismisses the LPFM Application before the Second AM Window opens, (C) if the Translator causes or receives any actual interference which is not resolved before the Closing, (D) at any time after the first anniversary of the date hereof if the Closing has not yet occurred, or (E) if SDG is in default under the Service Agreement.

Article 8: Miscellaneous

8.1. Further Assurances. After Closing, each party from time to time, at the request of and without further cost or expense to the other, will execute and deliver such other instruments of conveyance and assumption and take such other actions as reasonably may be requested to more effectively consummate the transactions contemplated hereby.

8.2. Assignment. Neither party may assign this Agreement without the prior written consent of the other party hereto; provided, however, that Buyer may assign its rights hereunder to an affiliate of Buyer upon written notice to, but without consent of, Seller, if (i) such assignment does not delay processing of the FCC Assignment Application, grant of the FCC Assignment Consent or Closing, (ii) such assignee delivers to Seller a written assumption of this Agreement, and (iii) Buyer remains liable for all its obligations hereunder. The terms of this Agreement will bind and inure to the benefit of the parties' respective successors and any permitted assigns, and no assignment will relieve any party of any obligation or liability under this Agreement.

8.3. Notices. Any notice under this Agreement will be in writing and delivered by reputable overnight courier services, such as Federal Express, to the party to be notified at its address first set forth above (or to such other address as a party may designate by written notice to the other party).

Notices will be deemed given upon actual delivery, or, if delivery is refused by the intended recipient, upon first attempted delivery.

8.4. Amendments. No amendment or waiver of compliance with any provision hereof or consent under this Agreement will be effective unless evidenced by an instrument in writing signed by the party against whom enforcement of such amendment, waiver, or consent is sought.

8.5. Entire Agreement. This Agreement (including the Schedules hereto) and the Service Agreement constitute the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersede all prior agreements and understandings with respect to the subject matter hereof. No party makes any representation or warranty with respect to the transactions contemplated by this Agreement except as expressly set forth in this Agreement.

8.6. Severability. If any Governmental or Regulatory Authority holds any provision in this Agreement invalid, illegal or unenforceable under any applicable law, then, so long as no party is deprived of the benefits of this Agreement in any material respect, this Agreement will be construed with the invalid, illegal or unenforceable provision deleted and the validity, legality and enforceability of the remaining provisions contained herein will not be affected or impaired thereby.

8.7. No Beneficiaries. Nothing in this Agreement expressed or implied is intended or will be construed to give any rights to any person or entity other than the parties hereto and their successors and permitted assigns.

8.8. Governing Law. The construction and performance of this Agreement will be governed by the laws of the State of California, without giving effect to the choice of law provisions thereof.

8.9. Counterparts. This Agreement may be executed in separate counterparts, each of which will be deemed an original and all of which together will constitute one and the same agreement.

Article 9: Definitions; Construction.

9.1 Defined Terms. As used herein, the following terms have the meanings ascribed to them below.

"Act" means the Communications Act of 1934, as amended.

"Actions or Proceedings" means any action, suit, proceeding, arbitration, or Governmental or Regulatory Authority investigation or audit.

"Agreement" means this Asset Purchase Agreement, together with all exhibits, schedules and annexes hereto.

"ASRN" means Antenna Structure Registration Number.

"Buyer" has the meaning set forth in the introductory paragraph hereto.

"Closing" means the consummation of the transactions contemplated in Article I.



**"Closing Date"** means the date on which the Closing occurs.

**"FAA"** means the Federal Aviation Administration.

**"FCC"** has the meaning set forth in the Recitals.

**"FCC Applications"** means the FCC Assignment Application, the Modification Application, and the License Application.

**"FCC Assignment Consent"** means the FCC consent to the FCC Assignment Application on terms acceptable to Buyer, in its sole discretion, other than those of general applicability.

**"FCC Modification Application"** has the meaning set forth in Section 1.5.

**"Final"** means, with respect to any FCC action, that action will have been taken by the FCC (including action taken by the FCC's staff under delegated authority) which will not have been reversed, stayed, enjoined, set aside, annulled or suspended, with respect to which no timely request for stay, petition for rehearing, appeal or certiorari or *sua sponte* action of the FCC with comparable effect will be pending; and as to which the time for filing any such request, petition, appeal, certiorari, or for the taking of any such *sua sponte* action by the FCC, will have expired or otherwise terminate.

**"Final Consent"** means, with respect to each FCC Application, a grant of that FCC Application, which, in each case, is Final.

**"Government"** means the United States of America, any foreign country or any domestic or foreign state, country, city or other political subdivision.

**"Governmental or Regulatory Authority"** means any court, tribunal, arbitral authority, agency, commission, official or other instrumentality of any Government.

**"Initial Broadcast Period"** has the meaning set forth in Section 5.4.

**"Laws"** means all laws, statutes, rules, regulations, ordinances and other pronouncements having the effect of law of any Government, or of any Governmental or Regulatory Authority.

**"Liens"** means any mortgage, pledge, assessment, security interest, lease, lien, adverse claim, levy, charge or other encumbrance of any kind, or any conditional sale agreement, title retention contract, or commitments to deliver any of the foregoing

**"Modification Application"** has the meaning set forth in Section 2.5.

**"Permit"** means construction permit BNPFT-20130830ASN, and, after the grant of the Modification Application becomes Final, the permit the FCC issues in connection therewith.

**"Person"** means any natural person, corporation, general partnership, limited partnership, limited liability company, proprietorship, other business organization, trust, union, associations or Governmental or Regulatory Authority.

"Purchase Price" has the meaning set forth in Section 1.3.

"Second AM Window" has the meaning set forth in the Recitals.

"Service Agreement" means the Service Agreement that Buyer and SDG are entering into in contemporaneously with the execution and delivery of this Agreement.

"Seller" has the meaning set forth in the Recitals.

"SDG" means Spectrum Development Group, LLC, an Illinois limited liability company.

"Tower" has the meaning set forth in Section 2.1.

"Tower Lease" has the meaning set forth in Section 2.1.

9.2 Construction; Certain Terms and Phrases. Unless the context of this Agreement otherwise requires: (i) words of any gender include each other gender; (ii) words using the singular or plural number also include the plural or singular number, respectively; (iii) the terms "hereof," "hereby" and derivative or similar words refer to this entire Agreement; (iv) the term "Article" or "Section" refers to the specified article or section of this Agreement; (v) the term "Exhibit" refers to the exhibits to this Agreement; (vi) the word "or" will be deemed to include both its disjunctive and conjunctive meanings; and (vii) the term "including" and similar or derivative words will be deemed to be followed by the words "without limitation." Whenever this Agreement refers to a number of days, that number will refer to calendar days unless business days are specified. As used herein, "Business Day" means any day other than Saturday, Sunday or any day on which banks located in Sacramento, California are authorized or obligated to close, and (y) "affiliate" means, with respect to any Person, any other Person that controls, is controlled by, or is under common control with, such Person.

In Witness Whereof, the parties have executed this Agreement as of the date first set forth above.

BUYER:

Lotus Sacramento Corp.

By:

James Kalmenson Sr., Vice President

SELLER:

Edgewater Broadcasting, Inc.

By:

Clark Parrish, President