SW/vv
08/07/14
Item #13

AN ORDINANCE 2014-08-07-0529

AUTHORIZING THREE ANTENNA LICENSE AGREEMENTS WITH SAN ANTONIO RADIOWORKS, LLC AND WILDCATTER WIRELESS, LLC FOR THE PURPOSE OF OPERATING AND MAINTAINING RADIO BROADCAST TRANSLATORS AND ASSOCIATED EQUIPMENT AT THE TOWER OF THE AMERICAS.

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WHEREAS, this ordinance will authorize two antenna license agreements with San Antonio RadioWorks, LLC and one antenna license agreement with Wildcatter Wireless, LLC for the purpose of operating and maintaining radio broadcast translators and associated equipment at the Tower of the Americas; and

WHEREAS, San Antonio RadioWorks, LLC will operate and maintain translators K277CX (103.3) and K279AB (103.7); and

WHEREAS, Wildcatter Wireless, LLC will operate and maintain translator K296GK (107.1); and

WHEREAS, the initial term of each agreement is five years commencing on September 1, 2014 through August 31, 2019; and

WHEREAS, each agreement provides for two five-year renewal options; and

WHEREAS, licensees will pay an initial annual license fee of $22,960.00 per agreement; this fee will then escalate 3.00% annually; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or her designee or the Director of the Center City Development Office or his designee is authorized to execute three antenna license agreements, two with San Antonio RadioWorks, LLC and one with Wildcatter Wireless, LLC for the purpose of operating and maintaining radio broadcast translators and associated equipment at the Tower of the Americas. Copies of the license agreements in substantially final form are attached hereto and incorporated herein for all purposes as **Attachment I, II** and **III**.

SECTION 2. Funds generated by this ordinance will be deposited into Fund 11001000, Internal Order 219000000008 and General Ledger 4407712.

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SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 4. This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 7th day of August, 2014.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

for Robert F. Greenblum, City Attorney

Agenda Item:	**13 (in consent vote: 6, 7, 8, 9, 12, 13, 15, 16, 17A, 17B, 17C, 17D, 18, 19, 21, 22, 23, 24, 25, 26, 27)**
Date:	08/07/2014
Time:	11:34:24 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing three antenna license agreements with San Antonio RadioWorks, LLC and Wildcatter Wireless, LLC for the purpose of operating and maintaining radio broadcast translators and associated equipment at the Tower of the Americas. [Carlos Contreras, Assistant City Manager; Lori Houston, Director, Center City Development]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy Taylor	Mayor		x				
Diego Bernal	District 1		x				
	District 2	x					
Rebecca Viagran	District 3		x				x
Rey Saldaña	District 4		x			x	
Shirley Gonzales	District 5		x				
Ray Lopez	District 6	x					
	District 7	x					
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

TOWER OF THE AMERICAS
ANTENNA LICENSE AGREEMENT

This License Agreement ("AGREEMENT") is entered into by and between the City of San Antonio (hereinafter called "**CITY**") and San Antonio RadioWorks, LLC (hereinafter called "**LICENSEE**") for the purpose of operating and maintaining a radio broadcast translator K277CX and associated equipment (hereinafter called "EQUIPMENT") at the Tower of the Americas (hereinafter called "TOWER"), in HemisFair Park. This AGREEMENT is pursuant to approval by the City of San Antonio City Council (hereinafter called "City Council") through Ordinance Number _____approved on _____, 2014, and the following terms, conditions, and covenants:

1. LICENSED PREMISES

1.1. **CITY** hereby grants access to the following real property ("the Premises") to **LICENSEE** for use in operating and maintaining EQUIPMENT during the times indicated below:

1.1.1. Tower of the Americas, Level 6, 600 HemisFair Park Plaza, San Antonio, TX 78205

1.1.2. **LICENSEE** may operate and maintain approved EQUIPMENT in a location mutually approved by **CITY** and **LICENSEE**, **CITY** retains a superior right on the location and installation of all **LICENSEE** equipment, including the right to have **LICENSEE** move any equipment as necessary.

1.2. **LICENSEE** acknowledges that **CITY** has leased substantially the entire TOWER to WILLIE G'S POST OAK, INC. ("WILLIE G'S) and agrees that provided that **LICENSEE** is granted access to the Premises within thirty minutes, the access granted herein shall be subject to any reasonable regulation imposed by WILLIE G'S as further detailed in that lease agreement between the **CITY** and WILLIE G'S authorized and approved by City Council through Ordinance No. 99996 (the "Willie G's Lease"). Subject to the preceding, **LICENSEE** (as defined in Section 12.1) shall have access at all times, 24 hours per day, 7 days per week, to the TOWER and its EQUIPMENT during the term of this AGREEMENT, and **CITY** shall ensure that WILLIE G'S provides the access that is required to provide to **CITY'S** tenants pursuant to Willie G's Lease.

1.2.1. **LICENSEE** hereby agrees to the following arrangement for access to EQUIPMENT in the TOWER:

1.2.1.1. If **LICENSEE** requires access to the TOWER, Monday – Friday, between the hours of 7:45 a.m. – 4:30 p.m., **LICENSEE** must notify **CITY'S** Center City Development Office in order to coordinate access to the TOWER.

1.2.1.1.1. If **LICENSEE** requires access to the TOWER outside of the days and hours identified above, **LICENSEE** must notify **CITY'S** Park Police Dispatch at (210-207-8590) in order to coordinate access to the TOWER.

1.2.1.2. **LICENSEE** shall use reasonable efforts to notify the **CITY** at least twenty-four (24) hours in advance of the approximate time at which **LICENSEE** will need access to the Premises for scheduled maintenance.

1.2.1.3. Except for subcontractors which the **CITY** has approved, subcontractors used by **LICENSEE** shall at all times be escorted by a **LICENSEE** representative when on the Premises.

1.2.1.4. While on the Premises, personnel of **LICENSEE** must wear a suitable photo ID badge, to be provided by **LICENSEE**, that includes a nominal 1 ½ square inch personal photo, unique logo and labeling that identifies the employer and the employee by name, and a telephone number where confirmation of employment may be readily confirmed.

1.2.1.5. **LICENSEE** shall at all times assure that the **CITY** has a current list of all of its personnel who are authorized to be on the Premises on its behalf. The **CITY** shall be notified to immediately remove the name of any employee subject to disciplinary probation or termination, and shall be notified of additional personnel to be added to this list. **CITY** shall have the right to exclude any employee, agent, or representative of **LICENSEE** from **CITY** property, for reasonable cause, if deemed by the **CITY** to be necessary for proper security of its facilities or the safety of its employees.

1.2.1.6. **LICENSEE** shall park it maintenance truck or any other vehicle owned or used by **LICENSEE**, in a location as close as possible to the TOWER that does not impede TOWER operations and/or emergency lane areas. WILLIE G'S shall have final authority to determine parking locations.

1.3. **LICENSEE** agrees and specifically understands that this AGREEMENT is confined to the privilege to use the Premises and that the permission herein given does not grant **LICENSEE** any interest or estate in the Premises but is a mere personal privilege to conduct certain acts of a temporary nature upon the Premises, and that **CITY** retains dominion, possession, and control of said Premises, including access thereto, at all times, **CITY** reserves the right to enforce all necessary and proper rules for the management and operation of the Premises, and may eject from the Premises, any person or persons to accomplish such ends.

2. ACCEPTANCE AND CONDITION OF PREMISES

2.1. **LICENSEE** has had full opportunity to examine the grounds of the Premises and acknowledges that there is in and about them nothing dangerous to life, limb, or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. **LICENSEE** taking possession of the Premises shall be conclusive evidence of **LICENSEE'S** acceptance thereof in good order and satisfactory condition, and **LICENSEE** hereby accepts the Premises in its present AS IS, WHERE IS, WITH ALL FAULTS CONDITION as suitable for the purpose for which licensed. **LICENSEE** accepts the Premises with the full knowledge, understanding and agreement that **CITY** disclaims any warranty of suitability for **LICENSEE'S** intended commercial purposes.

2.2. **LICENSEE** agrees that no representations, respecting the condition of the Premises, and no promises to decorate, alter, repair or improve the Premises, either before or after the execution hereof, have been made by **CITY** or its agents to **LICENSEE** unless the same are contained herein or made part hereof by specific reference herein.

3. OPERATION AND MAINTENANCE OF ANTENNA EQUIPMENT

3.1. For the term of this AGREEMENT, **LICENSEE** will be allowed to operate and maintain, as space allows, within the Premises and as approved by **CITY** its EQUIPMENT as listed in **Exhibit A** and further illustrated in **Exhibit B**.

3.2. **LICENSEE** at its sole cost and expense shall replace EQUIPMENT, as they deem necessary after receiving written approval from **CITY** as referenced in Section 9.1. **CITY** shall ensure that **LICENSEE** has access to the TOWER for their installation needs. **LICENSEE** agrees to take all safety and security measures necessary to facilitate removal of obsolete equipment and installations of any new equipment, including street closures or partial barricading as approved by the passage of a City of San Antonio ordinance, where necessary. **LICENSEE** further agrees that fees related to the herein mentioned repairs and security measures will be at the sole expense of **LICENSEE**. All work must be coordinated with WILLIE G'S.

3.3. **LICENSEE** agrees to clean and remove all trash and debris, replace damaged and/or other damaged real or personal property during and at the conclusion of this AGREEMENT. **LICENSEE** will restore the TOWER to substantially the same condition at the conclusion of this AGREEMENT as it was prior to this AGREEMENT.

3.4. **LICENSEE'S** rights under this AGREEMENT are solely limited to the right to operate and maintain EQUIPMENT during the authorized time period. **LICENSEE** will not engage in any other type of activity while utilizing the Premises.

3.5. In the event that any equipment installed by **LICENSEE** on the Premises shall cause any interference with existing installations or future installations by **CITY** in the Tower during the term of hereof, **LICENSEE** shall correct said electromagnetic interference, or remove the equipment which is causing such interference within 48 hours of notification by **CITY**.

4. TERM AND TERMINATION

4.1. The term of this AGREEMENT shall be for five (5) years beginning with an effective date of September 1, 2014, and terminating August 31, 2019, unless sooner terminated pursuant to the provisions in Article 9. The right is expressly reserved to **CITY** acting through the City Council, to terminate this AGREEMENT for the following:

4.1.1. In the event this AGREEMENT is deemed to be inconsistent with the public use of the property; or

4.1.2. In the event the use of the Premises shall have been deemed a nuisance by a court of competent jurisdiction.

4.2. **LICENSEE** is hereby granted and shall, if not at that time in default of this AGREEMENT beyond the expiration of any applicable notice or cure period, have, for good and valuable consideration given, two (2) options to extend the term of this AGREEMENT for additional consecutive periods of five (5) years each after the expiration of the initial term hereof, on the same terms, covenants, and conditions, and subject to the same exceptions and reservations herein contained.

4.2.1. Extension shall be exercised by **LICENSEE'S** delivering to **CITY** in person or by the United States mail, at any time on or before ninety (90) days prior to the expiration date of the then current term of this AGREEMENT written notice of its desire to extend the term of this AGREEMENT as herein provided. And such shall be subject to CITY COUNCIL approval, which approval shall not be unreasonably withheld, as evidenced by passage of a City Ordinance.

4.3. Holding Over. In the event **LICENSEE** does not extend the term of this AGREEMENT as provided herein, and holds over beyond the expiration of the term hereof, or if said term is renewed and extended pursuant to Section 4.2 of this AGREEMENT, beyond the expiration of the five year renewal option period, as applicable, such holding over shall be deemed a month-to-month tenancy, at a compensation equal to double the amount of the compensation paid for the last month of the term of this AGREEMENT. Inclusion of the preceding sentence shall not be construed as **CITY'S** consent for the **LICENSEE** to hold over.

4.4. In the event **LICENSEE** shall default in the performance of any covenant of agreements contained herein and shall fail, following thirty (30) days' written notice of such default, to remedy same, save and except a ten (10) days notice period will apply in the case of default in the payment of rent.

4.5. In the event of termination by City Council in relation to 4.1.1 or 4.1.2 above, the **CITY** shall give **LICENSEE** notice in writing at least ninety (90) days prior to the termination date.

4.6. The **LICENSEE** shall have the right to terminate this AGREEMENT upon sixty (60) days notice to the **CITY** in the event the Federal Communications Commission ("FCC") changes the **LICENSEE'S** transmission site, reduces its effective radiated power or coverage, or terminates its broadcast authority. **LICENSEE** shall be obligated to pay the **CITY** the monthly license fee and remove its equipment prior to the end of the notice period.

5. COMPENSATION TO CITY

5.1. **LICENSEE** shall pay ("Compensation") to **CITY**, the following licensee fee in one (1) annual lump sum in advance of the Effective Date of this AGREEMENT and each annual anniversary thereafter or in monthly installments in advance on the first day of each month in accordance with the following schedule:

License Year	Annual License Fee	Monthly License Fee
9/1/2014 – 8/31/2015	$22,960.00	$1,913.33
9/1/2015 – 8/31/2016	$23,648.80	$1,970.73
9/1/2016 – 8/31/2017	$24,358.26	$2,029.86
9/1/2017 – 8/31/2018	$25,089.01	$2,090.75
9/1/2018 – 8/31/2019	$25,841.68	$2,153.47

5.2. Compensation for extension periods as provided by Section 4.2 will be at a rate increased annually by 3.00%.

5.3. Payments are to be submitted to:

City of San Antonio
Revenue Division
P.O. Box 839975
San Antonio, Texas 78283-3975

6. RECORDS, REPORTS, AND AUDIT RIGHTS

6.1. **LICENSEE** shall maintain, in San Antonio, Texas, books and records reflecting operations hereunder in accordance with generally accepted accounting principles for three (3) years after the final payment under this AGREEMENT or until all audits, if any, are complete and findings on all claims have been finally resolved, whichever is the greater period of time. Such books, and records, together with any other documentation necessary for verification of **LICENSEE'S** compliance with the terms of this AGREEMENT, shall be made available to **CITY**, upon reasonable request. At **CITY'S** expense, the **CITY** shall have the right to conduct an audit, examine and make excerpts or transcripts from said books, records, and documentation to verify the financial activity for the licensed year.

7. LICENSEE'S EMPLOYEES

7.1. **LICENSEE** shall provide and train, at its sole cost and expense, a sufficient number of employees to comply with its contractual obligations hereunder. Such employees of **LICENSEE** shall in no way be construed as **CITY** employees nor shall they be entitled to any compensation or benefits from or by the City.

7.2. **LICENSEE** shall develop and enforce a policy of employee standards for on-the-job conduct, appearance, and demeanor; this shall include official **LICENSEE** identification for all employees.

7.3. **LICENSEE** must ensure that **LICENSEE'S** employees are properly attired in dress that is clean and neat at all times.

7.4. **LICENSEE** accepts full responsibility for filing all applicable tax returns (if any) and paying all applicable taxes (if any), that may be required by law or due for **LICENSEE'S** employees under the terms and conditions of this AGREEMENT.

8. UTILITIES

8.01 **LICENSEE** shall during the term hereof, pay all charges for telephone, gas, electricity, water, or any other power or utilities used by it for or on the PREMISES before they shall become delinquent and shall hold the **CITY** harmless from any liability therefore, **LICENSEE** shall cause any utilities for the PREMISES and the Equipment (including any necessary air conditioning) to be separately metered. Payment of any utility charges must be remitted within ten (10) days of receipt of invoice, whether such invoice comes from **CITY** or from WILLIE G'S or any other future tenant of **CITY**.

8.02 **LICENSEE** shall be authorized to install, at its own expense, air conditioning in the space occupied by their equipment on the PREMISES to cause the PREMISES to comply with applicable federal, state and local regulations or for its own purposes.

8.03 The **CITY** agrees that **LICENSEE** will have the ability to be provided back-up power generation sufficient to fully operate its equipment in the event its primary source of power is interrupted if said work is coordinated with WILLIE G'S and any additional costs of upgrading the generator power necessary to facilitate the needs of **LICENSEE** is borne by **LICENSEE** . If in case of emergency during a power outage, it is at the CITY'S discretion to allow all generator power to be routed to the elevators to allow the public to be removed from the PREMISES

9. IMPROVEMENTS

9.1. **LICENSEE** shall not construct, or allow to be constructed, any improvements or structures on the Premises nor shall **LICENSEE** make or allow to be made, any alterations to the Premises without the prior written approval of **CITY** through the Center City Development Office's Director (hereinafter "DIRECTOR") and any and all other necessary departments, boards, commissions, or City Council, including, but not limited to, the Historic and Design Review Commission.

9.2. **LICENSEE** covenants that it shall not bind, or attempt to bind, **CITY** for the payment of any money in connection with the construction, repair, alteration, addition or reconstruction in on or about the Licensed Premises. Further, **LICENSEE** agrees to remove, within thirty (30) days after filing, by payment or provision for bonding, any mechanic's or material man's lien filed against the Licensed Premises and to indemnify to extent allowed by law, **CITY** in connections with such liens to the extent of any damages, expenses, attorney's fees, or court costs incurred by **CITY**.

10. TERMINATION PROVISIONS

10.1. The **CITY** shall have the authority to terminate this AGREEMENT in the event that **LICENSEE** does not comply with the terms listed herein, and includes, but is not limited to:

10.1.1. **LICENSEE** personnel not in compliance with the terms of this AGREEMENT;

10.1.2. Engaging in any sub-licensing activities that do not have prior written approval by **CITY**;

10.1.3. Failure to pay Compensation fees to **CITY** within given due date period;

10.1.4. Failure to procure and provide proof of required insurance coverage and documentation as provided herein.

11. MAINTENANCE OF PROPERTY

11.1. **LICENSEE** shall, during the term of this AGREEMENT, keep or cause to be kept the Premises free of litter, trash, paper, and other waste caused by **LICENSEE** use and shall

place same in standard trash containers, provided by **LICENSEE**, and shall conform to all applicable garbage, sanitary and health regulations of the City.

11.2. Other than as provided herein, **LICENSEE** shall be responsible for the condition of the Premises immediately adjacent and attributable to **LICENSEE'S** use during the term of this AGREEMENT. **LICENSEE** shall repair any damage to the Premises caused by **LICENSEE** and its invitees, and shall maintain, or caused to be maintained, the Premises in a clean, neat, attractive and sanitary condition.

11.3. **LICENSEE** will, at the termination of this AGREEMENT, return the Premises to **CITY** in as good condition as at the commencement of the term hereof.

12. ASSIGNMENT AND SUBLETTING

12.1. If not at that time of default, this AGREEMENT may be assigned by **LICENSEE** to subsequent FCC license-holder or permit-holder of **LICENSEE'S** FM translator, in which case **LICENSEE** shall be released from liability, but the new license-holder or permit-holder of the FM translator shall be bound by the same terms and conditions as **LICENSEE**. Such assignment shall be made after giving thirty (30) days written notice, as set forth herein, to **CITY** and receiving written approval by **CITY** through the DIRECTOR which shall not be unreasonable withheld.

12.2. Without the prior written consent of **LICENSEE**, **CITY** shall have the right to transfer and assign, in whole or in part, any of its rights and obligations under this AGREEMENT and in the building and property referred to herein; and to the extent that such assignee assumes **CITY'S** obligations hereunder, **CITY** shall, by virtue of such assignment, be released from such obligation.

12.3. The receipt by **CITY** of Compensation from an assignee, or occupant of the Premises shall not be deemed a waiver of the covenant in this AGREEMENT against assignment and or an acceptance of the assignee, or occupant, or a release of **LICENSEE** from further observance or performance by **LICENSEE** of the covenants contained in this AGREEMENT. No provision of this AGREEMENT shall be deemed to have been waived by **CITY** unless such waiver is in writing signed by **CITY**.

13. INDEMNIFICATION

13.1. **LICENSEE** covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the **CITY** and the elected officials, employees, officers, directors, volunteers and representatives of the **CITY**, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the **CITY** directly or indirectly arising out of, resulting from or related to **LICENSEE'S** activities under this AGREEMENT, including any acts or omissions of **LICENSEE**, any agent, officer, director, representative, employee, consultant or subcontractor of **LICENSEE**, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT, all without however, waiving any governmental immunity available to the **CITY** under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL

APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF **CITY**, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF **CITY**, UNDER THIS AGREEMENT. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. **LICENSEE** shall advise the **CITY** in writing within 24 hours of any claim or demand against the **CITY** or **LICENSEE** known to **LICENSEE** related to or arising out of **LICENSEE'S** activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at **LICENSEE'S** cost. The **CITY** shall have the right, at its option and at its own expense, to participate in such defense without relieving **LICENSEE** of any of its obligations under this paragraph.

13.2. It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by **LICENSEE** to INDEMNIFY, PROTECT and HOLD HARMLESS, the **CITY** from the consequences of the **CITY'S** OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the **CITY** is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the **CITY** is the sole cause of the resultant injury, death, or damage. **LICENSEE** further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE **CITY** AND IN THE NAME OF THE **CITY**, any claim or litigation brought against the **CITY** and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

14. INSURANCE REQUIREMENTS

14.1. Any and all employees, representatives, agents or volunteers of **LICENSEE** while engaged in the performance of any work required by the **CITY** or any work related to a License of space or Concession Agreement with the **CITY** shall be considered employees, representatives, agents or volunteers of **LICENSEE** only and not of the **CITY**. Any and all claims that may result from any obligation for which **LICENSEE** may be held liable under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or under any similar law on behalf of said employees, representatives, agents or volunteers shall be the sole obligation and responsibility of **LICENSEE**.

14.2. Prior to the commencement of any work under this AGREEMENT, **LICENSEE** shall furnish an original completed Certificate(s) of Insurance, including endorsements, to the DIRECTOR, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s), and endorsements, must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the **CITY**. The **CITY** shall have no duty to pay or perform under this AGREEMENT until such certificate shall have been delivered to the **CITY'S** DIRECTOR, and no officer or employee shall have authority to waive this requirement.

14.3. **LICENSEE'S** financial integrity is of interest to **CITY**, therefore, subject to **LICENSEE'S** right to maintain reasonable deductibles in such amounts as are approved by **CITY**, **LICENSEE** shall obtain and maintain in full force and effect for the duration of this AGREEMENT, and any extension hereof, at **LICENSEE'S** sole expense, insurance coverage written, on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNT
Workers' Compensation and Employers Liability	Statutory $1,000,000/$1,000,000/$1,000,000
Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability f. Environmental Impairment/Impact-sufficiently broad to cover disposal liability.	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage.
Comprehensive Automobile Liability* a. Owned/Leased Vehicles b. Non-owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence
Property Insurance: For physical damage to the property of **LICENSEE**, including improvements and betterment to the Licensed Premises	Coverage for a minimum of eighty percent (80%) of the replacement cost of **LICENSEE'S** property

*If Applicable

14.4. **LICENSEE** agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

14.4.1. Name the **CITY** and its officers, employees, volunteers and elected representatives as additional insured, by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the **CITY**, with the exception of the workers' compensation and professional liability polices;

14.4.2. Provide for an endorsement that the "other insurance" clause shall not apply to the **CITY** of San Antonio where the **CITY** is an additional insured shown on the policy;

14.4.3. Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the **CITY**.

14.4.4. Provide thirty (30) calendar days advance written notice directly to **CITY** of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for non-payment of premium. All notices shall be given to the **CITY** at the following address:

City of San Antonio
Center City Development Office
Downtown Operations Division
P.O. Box 839966
San Antonio, Texas 78283-3966

14.4.5. Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, **LICENSEE** shall provide a replacement Certificate of Insurance and applicable endorsements to **CITY**. **CITY** shall have the option to suspend consultant's performance should there be a lapse in coverage at any time during this AGREEMENT. Failure to provide and to maintain the required insurance shall constitute a material breach of this AGREEMENT.

14.5. The **CITY** may upon **LICENSEE'S** failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the **CITY** shall have the right to order **LICENSEE** to stop the use of the Premises hereunder until **LICENSEE** demonstrates compliance with the requirements hereof.

14.6. Nothing herein contained shall be construed as limiting in any way the extent to which **LICENSEE** may be held responsible for payments of damages to persons or property resulting from **LICENSEE'S** or its subcontractors' performance of the work covered under this AGREEMENT.

14.7. It is agreed that Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this AGREEMENT.

14.8. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this AGREEMENT.

14.9. All personal property placed in the Premises shall be at the sole risk of **LICENSEE**. **CITY** shall not be liable, and **LICENSEE** waives all claims for any damage either to the person or property of **LICENSEE** or to other persons due to the Premises or any part of appurtenances thereof becoming out of repair or arising from bursting or leaking of water, gas, waste pipes, or defective wiring or excessive or deficient electrical current; or from any act or omission of employees, or other occupants of the Premises, or any other persons; due to the happening of any accident in or about Premises. **LICENSEE** shall save and hold harmless **CITY** from any claims arising out of damage to **LICENSEE'S** property or damage to **LICENSEE'S** business, including subrogation claims by **LICENSEE'S** insurers.

15. HOLD HARMLESS AND NO LIABILITY FOR LOSSES INCURRED BY LICENSEE

15.1. **LICENSEE** specifically waives any claim for any loss by **LICENSEE** of funds/revenues, merchandise, equipment, supplies, materials or other goods owned by **LICENSEE** whether due to theft, robbery, break-in, vandalism, acts of God or any other causes.

15.2. **LICENSEE** agrees to waive any claim against the **CITY** for any theft, damages or destruction of equipment, goods, and/or other property of **LICENSEE** so left on the Premises after **LICENSEE** vacates the Premises. If said equipment, goods and any other property placed by **LICENSEE** upon the Premises are not removed by **LICENSEE** within one week after the conclusion of this AGREEMENT, then the **CITY** may remove same without further notice or liability therefore.

16. RULES AND REGULATIONS

16.1. **LICENSEE** shall observe and comply with all laws and ordinances of the **CITY** affecting **LICENSEE** business, including but not limited to, the City's noise ordinance.

16.2. No advertisements, signs, decorations, improvements or displays shall be placed in on or about the Premises without the prior written approval of the **CITY** through the DIRECTOR and any and all other necessary departments, boards or commissions of the **CITY**, including, but not limited to the Historic and Design Review Commission. **LICENSEE** agrees to remove all signs from the Premises when **LICENSEE** vacates the Premises.

16.3. **Non-Discrimination. Licensee understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.**

16.4. **LICENSEE** shall not, except as may otherwise be permitted by applicable laws and regulations, pay less than the minimum wage required by Federal and State statutes and **CITY** ordinances to persons employed in its operations hereunder.

16.5. **LICENSEE** agrees, upon provision by the **CITY** of notice to **LICENSEE** of any employee in **LICENSEE** operations that may be reasonably deemed to be discourteous, objectionable, or rude, to take immediate appropriate remedial action, including, but not limited to, removal of said employee from employment on the Premises.

16.6. **LICENSEE** shall not place speakers or amplified music on near the Licensed Premises. **LICENSEE** shall comply with **CITY'S** law pertaining to noise as it relates to operations or activities occurring on the Premises. **LICENSEE** agrees to comply with any requests by San Antonio Park Police, San Antonio Police, or City of San Antonio noise abatement officers. Failure to comply with the section may, at **CITY'S** option, constitute a default under this AGREEMENT.

17. CONFLICT OF INTEREST

17.1. **LICENSEE** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined therein, from having a financial interest in any contract with the City or any City agency

such as City owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s)l or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

17.2. **CITY** warrants and certifies, and this AGREEMENT is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City or any of its agencies such as City owned utilities.

18. RESERVATIONS: CITY

18.1. **CITY** reserves the right to enter the Premises at all reasonable times for the purpose of examining, inspecting or making repairs as herein provided. **LICENSEE** shall not be entitled to an abatement or reduction of Compensation by reason of such entry, nor shall said entry be deemed to be an actual or constructive eviction of **LICENSEE** from the Premises.

18.2. **CITY** Park Police and other safety personnel shall have the right to entry on and into the Premises as needed to investigate any circumstances, conditions, or person that may appear to be suspicious. **LICENSEE** shall cooperate with all reasonable requests by such personnel to facilitate public safety and orderly conduct. **LICENSEE** expressly understands and agrees that **CITY** has not agreed to act and does not act as an insurer of **LICENSEE** property and does not guarantee security against theft, vandalism, or injury or whatever nature and kind to persons or property.

19. QUIET ENJOYMENT

19.1. **CITY** covenants and agrees, subject to the provisions of this AGREEMENT, that **LICENSEE**, on paying the rental and all other charges in this AGREEMENT provided for and observing and performing the covenants, agreements, and conditions of this AGREEMENT on its part to be observed and performed, shall lawfully and quietly hold, occupy and enjoy the Licensed Premises during the term without hindrance or molestations of any kind whatsoever.

20. SEPARABILITY

20.1. If any clause or provision of this AGREEMENT is illegal, invalid or unenforceable under present or future laws effective during the term of this AGREEMENT, then and in that event it is the intention of the parties hereto that the remainder of this AGREEMENT shall not be affected thereby, and it is also the intention of the parties to this AGREEMENT that in lieu of each clause or provision of this AGREEMENT that is illegal, invalid, or unenforceable, there be added as part of this AGREEMENT a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

21. NOTICES

21.1. **Notices to CITY required or appropriate under this AGREEMENT shall be deemed sufficient if in writing and mailed, Registered or Certified mail, Postage Prepaid, addressed to:**

City of San Antonio
Center City Development Office
Downtown Operations Division
P.O. Box 839966
San Antonio, Texas 78283-3966

City of San Antonio
City Clerk's Office
P.O. Box 839966
San Antonio, Texas 78283-3966

Or to such other address as may have been designated in writing by the City Manager of the City of San Antonio from time to time.

Notices to **LICENSEE** shall be deemed sufficient if in writing and mailed, Registered or Certified mail, Postage Prepaid, addressed to **LICENSEE** at:

San Antonio RadioWorks, LLC
Attn: John Barger, President
8023 Vantage Drive, Suite 840
San Antonio, TX 78230
Phone 210-340-7080
Mobile 210-602-7080
E-Mail jwbarger@sbcglobal.net

Or at such other address on file with the City Clerk as **LICENSEE** may provide from time to time in writing to **CITY**.

22. PARTIES BOUND

22.1. If there shall be more than one party designated as **LICENSEE** in this AGREEMENT, they shall each be bound jointly and severally hereunder.

22.2. The covenants and agreements herein contained shall insure to benefit of and be binding upon the parties hereto; their respective heir, legal representatives, successors, and such assigns as have been approved by **CITY**.

23. RELATIONSHIPS OF PARTIES

23.1. Nothing contained herein shall be deemed or construed by the parities to hereto or by any third party as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationships between the parties hereto.

24. TEXAS LAW TO APPLY

24.1. THIS AGREEMENT SHALL BE CONSTRUED UNDER IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARITIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

25. GENDER

25.1. Words or any gender used in this AGREEMENT shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context other requires.

26. CAPTIONS

26.1. The captions contained in this AGREEMENT are for convenience of reference only and in no way limit or enlarge the terms and conditions of this AGREEMENT.

27. ENTIRE AGREEMENT/AMENDMENT

27.1. This AGREEMENT, together with its attached exhibits and the authorizing ordinance, in writing, constitutes the entire agreement between the parties, any other written or parole agreement with **CITY** being expressly waived by **LICENSEE**.

27.2. No amendment, modification, or alteration of the terms of this AGREEMENT shall be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

27.3. It is understood that the Charter of the **CITY** requires that all contracts with the **CITY** be in writing and adopted by ordinance. All amendments also need approval evidence by an ordinance.

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28. AUTHORITY

28.1 The signer of this AGREEMENT for **LICENSEE** hereby represents and warrants that he or she has full authority to execute this AGREEMENT on behalf of **LICENSEE.**

LICENSOR:

CITY OF SAN ANTONIO,
A Texas Municipal Corporation

By:_____
City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

LICENSEE:

SAN ANTONIO RADIOWORKS, LLC

JOHN BARGER
Printed Name

Signature

PRESIDENT
MEMBER / MANAGER
Title

8023 VANTAGE DR - SUITE 840
Address

SAN ANTONIO, TX 78230
City, State and Zip Code

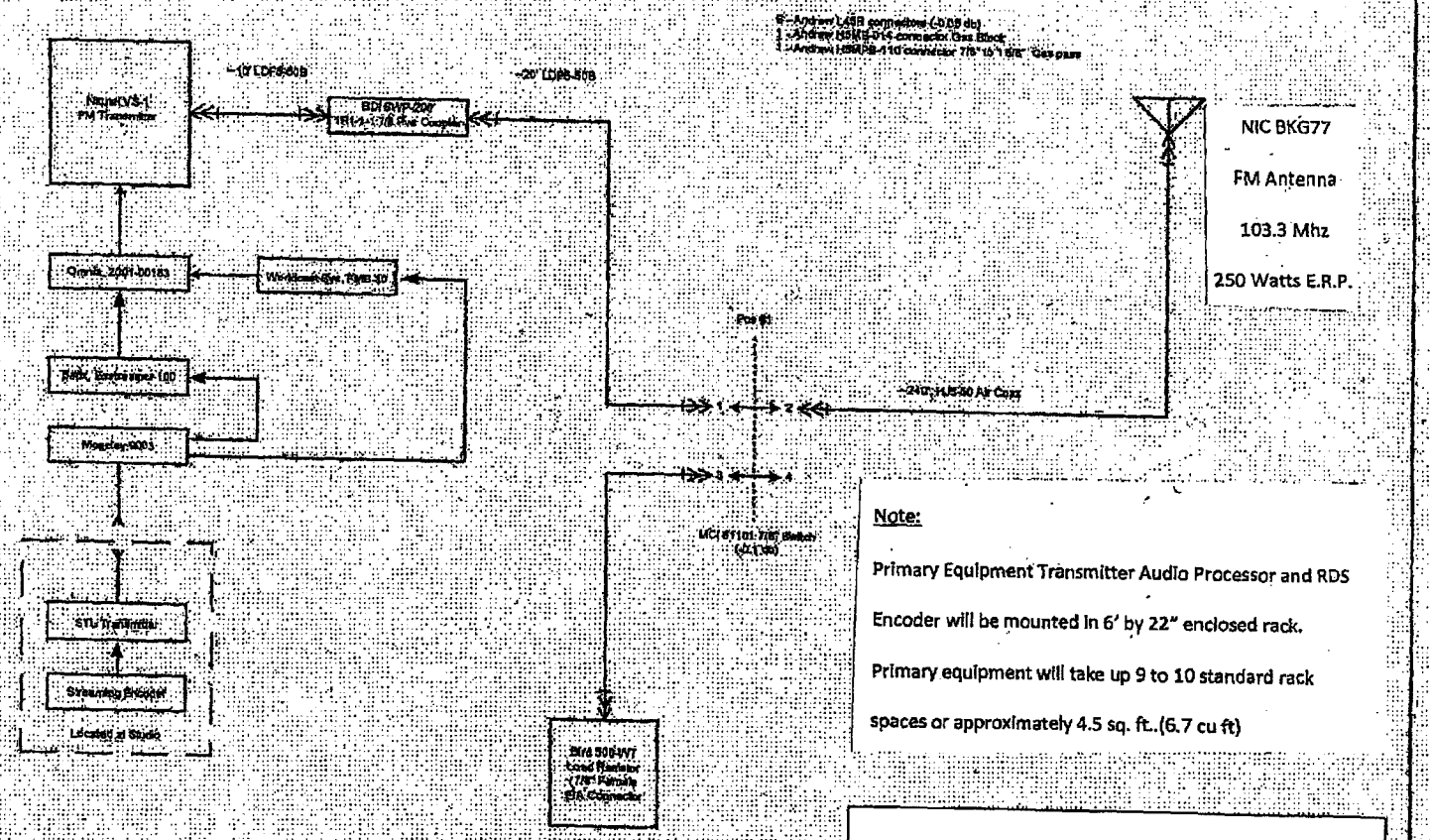
210-340-7080
Area Code/Telephone Number

EXHIBIT A
LICENSEE EQUIPMENT LISTING

EXHIBIT A - 103.3 MHz Licensee Equipment Listing (K277CX)

1. BW TX1000V2 Transmitter
2. Omnia 6EXI FM+HD Processor or equivalent.
3. FMB80, RDS encoder or equivalent.
4. Barix, Exsteamer or equivalent.
5. Moseley 9003 STL Receiver
6. ERI LPX-2E, FM low Power Broadcast Antenna
7. MCI 61101 or equivalent, coaxial switcher
8. Bird Electronic, 500 WT Load Resistor
9. BDI SWP-1R1- 1Watt meter /control switch
10. 240' Aprox. Andrew HJ5-50B 7/8", coax
11. 30' - Aprox Andre LDF-50 7/8" coax
12. 4' Open Grid Microwave Receive Dish Antenna
13. Other wire and cable as necessary to complete installation.

EXHIBIT B
LICENSEE EQUIPMENT ILLUSTRATION



Note:

Primary Equipment Transmitter Audio Processor and RDS Encoder will be mounted in 6' by 22" enclosed rack.

Primary equipment will take up 9 to 10 standard rack spaces or approximately 4.5 sq. ft..(6.7 cu ft)

Exhibit B - Tower of the Americas Translator System Layout
103.3 MHz – 250 Watts ERP
05-19-2014 - Page 1 of 1

Attachment II

TOWER OF THE AMERICAS
ANTENNA LICENSE AGREEMENT

This License Agreement ("AGREEMENT") is entered into by and between the City of San Antonio (hereinafter called "**CITY**") and San Antonio RadioWorks, LLC (hereinafter called "**LICENSEE**") for the purpose of operating and maintaining a radio broadcast translator K279AB and associated equipment (hereinafter called "EQUIPMENT") at the Tower of the Americas (hereinafter called "TOWER"), in HemisFair Park. This AGREEMENT is pursuant to approval by the City of San Antonio City Council (hereinafter called "City Council") through Ordinance Number _____approved on _____, 2014, and the following terms, conditions, and covenants:

1. LICENSED PREMISES

1.1. **CITY** hereby grants access to the following real property ("the Premises") to **LICENSEE** for use in operating and maintaining EQUIPMENT during the times indicated below:

1.1.1. Tower of the Americas, Level 6, 600 HemisFair Park Plaza, San Antonio, TX 78205

1.1.2. **LICENSEE** may operate and maintain approved EQUIPMENT in a location mutually approved by **CITY** and **LICENSEE**, **CITY** retains a superior right on the location and installation of all **LICENSEE** equipment, including the right to have **LICENSEE** move any equipment as necessary.

1.2. **LICENSEE** acknowledges that **CITY** has leased substantially the entire TOWER to WILLIE G'S POST OAK, INC. ("WILLIE G'S) and agrees that provided that **LICENSEE** is granted access to the Premises within thirty minutes, the access granted herein shall be subject to any reasonable regulation imposed by WILLIE G'S as further detailed in that lease agreement between the **CITY** and WILLIE G'S authorized and approved by City Council through Ordinance No. 99996 (the "Willie G's Lease"). Subject to the preceding, **LICENSEE** (as defined in Section 12.1) shall have access at all times, 24 hours per day, 7 days per week, to the TOWER and its EQUIPMENT during the term of this AGREEMENT, and **CITY** shall ensure that WILLIE G'S provides the access that is required to provide to **CITY'S** tenants pursuant to Willie G's Lease.

1.2.1. **LICENSEE** hereby agrees to the following arrangement for access to EQUIPMENT in the TOWER:

1.2.1.1. If **LICENSEE** requires access to the TOWER, Monday – Friday, between the hours of 7:45 a.m. – 4:30 p.m., **LICENSEE** must notify **CITY'S** Center City Development Office in order to coordinate access to the TOWER.

1.2.1.1.1. If **LICENSEE** requires access to the TOWER outside of the days and hours identified above, **LICENSEE** must notify **CITY'S** Park Police Dispatch at (210-207-8590) in order to coordinate access to the TOWER.

1.2.1.2. **LICENSEE** shall use reasonable efforts to notify the **CITY** at least twenty-four (24) hours in advance of the approximate time at which **LICENSEE** will need access to the Premises for scheduled maintenance.

1.2.1.3. Except for subcontractors which the **CITY** has approved, subcontractors used by **LICENSEE** shall at all times be escorted by a **LICENSEE** representative when on the Premises.

1.2.1.4. While on the Premises, personnel of **LICENSEE** must wear a suitable photo ID badge, to be provided by **LICENSEE**, that includes a nominal 1 ½ square inch personal photo, unique logo and labeling that identifies the employer and the employee by name, and a telephone number where confirmation of employment may be readily confirmed.

1.2.1.5. **LICENSEE** shall at all times assure that the **CITY** has a current list of all of its personnel who are authorized to be on the Premises on its behalf. The **CITY** shall be notified to immediately remove the name of any employee subject to disciplinary probation or termination, and shall be notified of additional personnel to be added to this list. **CITY** shall have the right to exclude any employee, agent, or representative of **LICENSEE** from **CITY** property, for reasonable cause, if deemed by the **CITY** to be necessary for proper security of its facilities or the safety of its employees.

1.2.1.6. **LICENSEE** shall park it maintenance truck or any other vehicle owned or used by **LICENSEE**, in a location as close as possible to the TOWER that does not impede TOWER operations and/or emergency lane areas. WILLIE G'S shall have final authority to determine parking locations.

1.3. **LICENSEE** agrees and specifically understands that this AGREEMENT is confined to the privilege to use the Premises and that the permission herein given does not grant **LICENSEE** any interest or estate in the Premises but is a mere personal privilege to conduct certain acts of a temporary nature upon the Premises, and that **CITY** retains dominion, possession, and control of said Premises, including access thereto, at all times, **CITY** reserves the right to enforce all necessary and proper rules for the management and operation of the Premises, and may eject from the Premises, any person or persons to accomplish such ends.

2. ACCEPTANCE AND CONDITION OF PREMISES

2.1. **LICENSEE** has had full opportunity to examine the grounds of the Premises and acknowledges that there is in and about them nothing dangerous to life, limb, or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. **LICENSEE** taking possession of the Premises shall be conclusive evidence of **LICENSEE'S** acceptance thereof in good order and satisfactory condition, and **LICENSEE** hereby accepts the Premises in its present AS IS, WHERE IS, WITH ALL FAULTS CONDITION as suitable for the purpose for which licensed. **LICENSEE** accepts the Premises with the full knowledge, understanding and agreement that **CITY** disclaims any warranty of suitability for **LICENSEE'S** intended commercial purposes.

2.2. **LICENSEE** agrees that no representations, respecting the condition of the Premises, and no promises to decorate, alter, repair or improve the Premises, either before or after the execution hereof, have been made by **CITY** or its agents to **LICENSEE** unless the same are contained herein or made part hereof by specific reference herein.

3. OPERATION AND MAINTENANCE OF ANTENNA EQUIPMENT

3.1. For the term of this AGREEMENT, **LICENSEE** will be allowed to operate and maintain, as space allows, within the Premises and as approved by **CITY** its EQUIPMENT as listed in **Exhibit A** and further illustrated in **Exhibit B**.

3.2. **LICENSEE** at its sole cost and expense shall replace EQUIPMENT, as they deem necessary after receiving written approval from **CITY** as referenced in Section 9.1. **CITY** shall ensure that **LICENSEE** has access to the TOWER for their installation needs. **LICENSEE** agrees to take all safety and security measures necessary to facilitate removal of obsolete equipment and installations of any new equipment, including street closures or partial barricading as approved by the passage of a City of San Antonio ordinance, where necessary. **LICENSEE** further agrees that fees related to the herein mentioned repairs and security measures will be at the sole expense of **LICENSEE**. All work must be coordinated with WILLIE G'S.

3.3. **LICENSEE** agrees to clean and remove all trash and debris, replace damaged and/or other damaged real or personal property during and at the conclusion of this AGREEMENT. **LICENSEE** will restore the TOWER to substantially the same condition at the conclusion of this AGREEMENT as it was prior to this AGREEMENT.

3.4. **LICENSEE'S** rights under this AGREEMENT are solely limited to the right to operate and maintain EQUIPMENT during the authorized time period. **LICENSEE** will not engage in any other type of activity while utilizing the Premises.

3.5. In the event that any equipment installed by **LICENSEE** on the Premises shall cause any interference with existing installations or future installations by **CITY** in the Tower during the term of hereof, **LICENSEE** shall correct said electromagnetic interference, or remove the equipment which is causing such interference within 48 hours of notification by **CITY**.

4. TERM AND TERMINATION

4.1. The term of this AGREEMENT shall be for five (5) years beginning with an effective date of September 1, 2014, and terminating August 31, 2019, unless sooner terminated pursuant to the provisions in Article 9. The right is expressly reserved to **CITY** acting through the City Council, to terminate this AGREEMENT for the following:

4.1.1. In the event this AGREEMENT is deemed to be inconsistent with the public use of the property; or

4.1.2. In the event the use of the Premises shall have been deemed a nuisance by a court of competent jurisdiction.

4.2. **LICENSEE** is hereby granted and shall, if not at that time in default of this AGREEMENT beyond the expiration of any applicable notice or cure period, have, for good and valuable consideration given, two (2) options to extend the term of this AGREEMENT for additional consecutive periods of five (5) years each after the expiration of the initial term hereof, on the same terms, covenants, and conditions, and subject to the same exceptions and reservations herein contained.

4.2.1. Extension shall be exercised by **LICENSEE'S** delivering to **CITY** in person or by the United States mail, at any time on or before ninety (90) days prior to the expiration date of the then current term of this AGREEMENT written notice of its desire to extend the term of this AGREEMENT as herein provided. And such shall be subject to CITY COUNCIL approval, which approval shall not be unreasonably withheld, as evidenced by passage of a City Ordinance.

4.3. Holding Over. In the event **LICENSEE** does not extend the term of this AGREEMENT as provided herein, and holds over beyond the expiration of the term hereof, or if said term is renewed and extended pursuant to Section 4.2 of this AGREEMENT, beyond the expiration of the five year renewal option period, as applicable, such holding over shall be deemed a month-to-month tenancy, at a compensation equal to double the amount of the compensation paid for the last month of the term of this AGREEMENT. Inclusion of the preceding sentence shall not be construed as **CITY'S** consent for the **LICENSEE** to hold over.

4.4. In the event **LICENSEE** shall default in the performance of any covenant of agreements contained herein and shall fail, following thirty (30) days' written notice of such default, to remedy same, save and except a ten (10) days notice period will apply in the case of default in the payment of rent.

4.5. In the event of termination by City Council in relation to 4.1.1 or 4.1.2 above, the **CITY** shall give **LICENSEE** notice in writing at least ninety (90) days prior to the termination date.

4.6. The **LICENSEE** shall have the right to terminate this AGREEMENT upon sixty (60) days notice to the **CITY** in the event the Federal Communications Commission ("FCC") changes the **LICENSEE'S** transmission site, reduces its effective radiated power or coverage, or terminates its broadcast authority. **LICENSEE** shall be obligated to pay the **CITY** the monthly license fee and remove its equipment prior to the end of the notice period.

5. COMPENSATION TO CITY

5.1. **LICENSEE** shall pay ("Compensation") to **CITY**, the following licensee fee in one (1) annual lump sum in advance of the Effective Date of this AGREEMENT and each annual anniversary thereafter or in monthly installments in advance on the first day of each month in accordance with the following schedule:

License Year	Annual License Fee	Monthly License Fee
9/1/2014 – 8/31/2015	$22,960.00	$1,913.33
9/1/2015 – 8/31/2016	$23,648.80	$1,970.73
9/1/2016 – 8/31/2017	$24,358.26	$2,029.86
9/1/2017 – 8/31/2018	$25,089.01	$2,090.75
9/1/2018 – 8/31/2019	$25,841.68	$2,153.47

5.2. Compensation for extension periods as provided by Section 4.2 will be at a rate increased annually by 3.00%.

5.3. Payments are to be submitted to:

City of San Antonio
Revenue Division
P.O. Box 839975
San Antonio, Texas 78283-3975

6. RECORDS, REPORTS, AND AUDIT RIGHTS

6.1. **LICENSEE** shall maintain, in San Antonio, Texas, books and records reflecting operations hereunder in accordance with generally accepted accounting principles for three (3) years after the final payment under this AGREEMENT or until all audits, if any, are complete and findings on all claims have been finally resolved, whichever is the greater period of time. Such books, and records, together with any other documentation necessary for verification of **LICENSEE'S** compliance with the terms of this AGREEMENT, shall be made available to **CITY**, upon reasonable request. At **CITY'S** expense, the **CITY** shall have the right to conduct an audit, examine and make excerpts or transcripts from said books, records, and documentation to verify the financial activity for the licensed year.

7. LICENSEE'S EMPLOYEES

7.1. **LICENSEE** shall provide and train, at its sole cost and expense, a sufficient number of employees to comply with its contractual obligations hereunder. Such employees of **LICENSEE** shall in no way be construed as **CITY** employees nor shall they be entitled to any compensation or benefits from or by the City.

7.2. **LICENSEE** shall develop and enforce a policy of employee standards for on-the-job conduct, appearance, and demeanor; this shall include official **LICENSEE** identification for all employees.

7.3. **LICENSEE** must ensure that **LICENSEE'S** employees are properly attired in dress that is clean and neat at all times.

7.4. **LICENSEE** accepts full responsibility for filing all applicable tax returns (if any) and paying all applicable taxes (if any), that may be required by law or due for **LICENSEE'S** employees under the terms and conditions of this AGREEMENT.

8. UTILITIES

8.01 **LICENSEE** shall during the term hereof, pay all charges for telephone, gas, electricity, water, or any other power or utilities used by it for or on the PREMISES before they shall become delinquent and shall hold the **CITY** harmless from any liability therefore, **LICENSEE** shall cause any utilities for the PREMISES and the Equipment (including any necessary air conditioning) to be separately metered. Payment of any utility charges must be remitted within ten (10) days of receipt of invoice, whether such invoice comes from **CITY** or from WILLIE G'S or any other future tenant of **CITY**.

8.02 **LICENSEE** shall be authorized to install, at its own expense, air conditioning in the space occupied by their equipment on the PREMISES to cause the PREMISES to comply with applicable federal, state and local regulations or for its own purposes.

8.03 The **CITY** agrees that **LICENSEE** will have the ability to be provided back-up power generation sufficient to fully operate its equipment in the event its primary source of power is interrupted if said work is coordinated with WILLIE G'S and any additional costs of upgrading the generator power necessary to facilitate the needs of **LICENSEE** is borne by **LICENSEE** . If in case of emergency during a power outage, it is at the CITY'S discretion to allow all generator power to be routed to the elevators to allow the public to be removed from the PREMISES

9. IMPROVEMENTS

9.1. **LICENSEE** shall not construct, or allow to be constructed, any improvements or structures on the Premises nor shall **LICENSEE** make or allow to be made, any alterations to the Premises without the prior written approval of **CITY** through the Center City Development Office's Director (hereinafter "DIRECTOR") and any and all other necessary departments, boards, commissions, or City Council, including, but not limited to, the Historic and Design Review Commission.

9.2. **LICENSEE** covenants that it shall not bind, or attempt to bind, **CITY** for the payment of any money in connection with the construction, repair, alteration, addition or reconstruction in on or about the Licensed Premises. Further, **LICENSEE** agrees to remove, within thirty (30) days after filing, by payment or provision for bonding, any mechanic's or material man's lien filed against the Licensed Premises and to indemnify to extent allowed by law, **CITY** in connections with such liens to the extent of any damages, expenses, attorney's fees, or court costs incurred by **CITY**.

10. TERMINATION PROVISIONS

10.1. The **CITY** shall have the authority to terminate this AGREEMENT in the event that **LICENSEE** does not comply with the terms listed herein, and includes, but is not limited to:

10.1.1. **LICENSEE** personnel not in compliance with the terms of this AGREEMENT;

10.1.2. Engaging in any sub-licensing activities that do not have prior written approval by **CITY**;

10.1.3. Failure to pay Compensation fees to **CITY** within given due date period;

10.1.4. Failure to procure and provide proof of required insurance coverage and documentation as provided herein.

11. MAINTENANCE OF PROPERTY

11.1. **LICENSEE** shall, during the term of this AGREEMENT, keep or cause to be kept the Premises free of litter, trash, paper, and other waste caused by **LICENSEE** use and shall

place same in standard trash containers, provided by **LICENSEE**, and shall conform to all applicable garbage, sanitary and health regulations of the City.

11.2. Other than as provided herein, **LICENSEE** shall be responsible for the condition of the Premises immediately adjacent and attributable to **LICENSEE'S** use during the term of this AGREEMENT. **LICENSEE** shall repair any damage to the Premises caused by **LICENSEE** and its invitees, and shall maintain, or caused to be maintained, the Premises in a clean, neat, attractive and sanitary condition.

11.3. **LICENSEE** will, at the termination of this AGREEMENT, return the Premises to **CITY** in as good condition as at the commencement of the term hereof.

12. ASSIGNMENT AND SUBLETTING

12.1. If not at that time of default, this AGREEMENT may be assigned by **LICENSEE** to subsequent FCC license-holder or permit-holder of **LICENSEE'S** FM translator, in which case **LICENSEE** shall be released from liability, but the new license-holder or permit-holder of the FM translator shall be bound by the same terms and conditions as **LICENSEE**. Such assignment shall be made after giving thirty (30) days written notice, as set forth herein, to **CITY** and receiving written approval by **CITY** through the DIRECTOR which shall not be unreasonable withheld.

12.2. Without the prior written consent of **LICENSEE**, **CITY** shall have the right to transfer and assign, in whole or in part, any of its rights and obligations under this AGREEMENT and in the building and property referred to herein; and to the extent that such assignee assumes **CITY'S** obligations hereunder, **CITY** shall, by virtue of such assignment, be released from such obligation.

12.3. The receipt by **CITY** of Compensation from an assignee, or occupant of the Premises shall not be deemed a waiver of the covenant in this AGREEMENT against assignment and or an acceptance of the assignee, or occupant, or a release of **LICENSEE** from further observance or performance by **LICENSEE** of the covenants contained in this AGREEMENT. No provision of this AGREEMENT shall be deemed to have been waived by **CITY** unless such waiver is in writing signed by **CITY**.

13. INDEMNIFICATION

13.1. **LICENSEE** covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the **CITY** and the elected officials, employees, officers, directors, volunteers and representatives of the **CITY**, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the **CITY** directly or indirectly arising out of, resulting from or related to **LICENSEE'S** activities under this AGREEMENT, including any acts or omissions of **LICENSEE**, any agent, officer, director, representative, employee, consultant or subcontractor of **LICENSEE**, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT, all without however, waiving any governmental immunity available to the **CITY** under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL

APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF **CITY**, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF **CITY**, UNDER THIS AGREEMENT. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. **LICENSEE** shall advise the **CITY** in writing within 24 hours of any claim or demand against the **CITY** or **LICENSEE** known to **LICENSEE** related to or arising out of **LICENSEE'S** activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at **LICENSEE'S** cost. The **CITY** shall have the right, at its option and at its own expense, to participate in such defense without relieving **LICENSEE** of any of its obligations under this paragraph.

13.2. It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by **LICENSEE** to INDEMNIFY, PROTECT and HOLD HARMLESS, the **CITY** from the consequences of the **CITY'S** OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the **CITY** is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the **CITY** is the sole cause of the resultant injury, death, or damage. **LICENSEE** further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE **CITY** AND IN THE NAME OF THE **CITY**, any claim or litigation brought against the **CITY** and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

14. INSURANCE REQUIREMENTS

14.1. Any and all employees, representatives, agents or volunteers of **LICENSEE** while engaged in the performance of any work required by the **CITY** or any work related to a License of space or Concession Agreement with the **CITY** shall be considered employees, representatives, agents or volunteers of **LICENSEE** only and not of the **CITY**. Any and all claims that may result from any obligation for which **LICENSEE** may be held liable under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or under any similar law on behalf of said employees, representatives, agents or volunteers shall be the sole obligation and responsibility of **LICENSEE**.

14.2. Prior to the commencement of any work under this AGREEMENT, **LICENSEE** shall furnish an original completed Certificate(s) of Insurance, including endorsements, to the DIRECTOR, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s), and endorsements, must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the **CITY**. The **CITY** shall have no duty to pay or perform under this AGREEMENT until such certificate shall have been delivered to the **CITY'S** DIRECTOR, and no officer or employee shall have authority to waive this requirement.

14.3. **LICENSEE'S** financial integrity is of interest to **CITY**, therefore, subject to **LICENSEE'S** right to maintain reasonable deductibles in such amounts as are approved by **CITY**, **LICENSEE** shall obtain and maintain in full force and effect for the duration of this AGREEMENT, and any extension hereof, at **LICENSEE'S** sole expense, insurance coverage written, on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNT
Workers' Compensation and Employers Liability	Statutory $1,000,000/$1,000,000/$1,000,000
Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability f. Environmental Impairment/Impact-sufficiently broad to cover disposal liability.	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage.
Comprehensive Automobile Liability* a. Owned/Leased Vehicles b. Non-owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence
Property Insurance: For physical damage to the property of **LICENSEE**, including improvements and betterment to the Licensed Premises	Coverage for a minimum of eighty percent (80%) of the replacement cost of **LICENSEE'S** property

*If Applicable

14.4. **LICENSEE** agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

14.4.1. Name the **CITY** and its officers, employees, volunteers and elected representatives as additional insured, by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the **CITY**, with the exception of the workers' compensation and professional liability polices;

14.4.2. Provide for an endorsement that the "other insurance" clause shall not apply to the **CITY** of San Antonio where the **CITY** is an additional insured shown on the policy;

14.4.3. Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the **CITY**.

14.4.4. Provide thirty (30) calendar days advance written notice directly to **CITY** of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for non-payment of premium. All notices shall be given to the **CITY** at the following address:

City of San Antonio
Center City Development Office
Downtown Operations Division
P.O. Box 839966
San Antonio, Texas 78283-3966

14.4.5. Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, **LICENSEE** shall provide a replacement Certificate of Insurance and applicable endorsements to **CITY**. **CITY** shall have the option to suspend consultant's performance should there be a lapse in coverage at any time during this AGREEMENT. Failure to provide and to maintain the required insurance shall constitute a material breach of this AGREEMENT.

14.5. The **CITY** may upon **LICENSEE'S** failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the **CITY** shall have the right to order **LICENSEE** to stop the use of the Premises hereunder until **LICENSEE** demonstrates compliance with the requirements hereof.

14.6. Nothing herein contained shall be construed as limiting in any way the extent to which **LICENSEE** may be held responsible for payments of damages to persons or property resulting from **LICENSEE'S** or its subcontractors' performance of the work covered under this AGREEMENT.

14.7. It is agreed that Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this AGREEMENT.

14.8. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this AGREEMENT.

14.9. All personal property placed in the Premises shall be at the sole risk of **LICENSEE**. **CITY** shall not be liable, and **LICENSEE** waives all claims for any damage either to the person or property of **LICENSEE** or to other persons due to the Premises or any part of appurtenances thereof becoming out of repair or arising from bursting or leaking of water, gas, waste pipes, or defective wiring or excessive or deficient electrical current; or from any act or omission of employees, or other occupants of the Premises, or any other persons; due to the happening of any accident in or about Premises. **LICENSEE** shall save and hold harmless **CITY** from any claims arising out of damage to **LICENSEE'S** property or damage to **LICENSEE'S** business, including subrogation claims by **LICENSEE'S** insurers.

15. HOLD HARMLESS AND NO LIABILITY FOR LOSSES INCURRED BY LICENSEE

15.1. **LICENSEE** specifically waives any claim for any loss by **LICENSEE** of funds/revenues, merchandise, equipment, supplies, materials or other goods owned by **LICENSEE** whether due to theft, robbery, break-in, vandalism, acts of God or any other causes.

15.2. **LICENSEE** agrees to waive any claim against the **CITY** for any theft, damages or destruction of equipment, goods, and/or other property of **LICENSEE** so left on the Premises after **LICENSEE** vacates the Premises. If said equipment, goods and any other property placed by **LICENSEE** upon the Premises are not removed by **LICENSEE** within one week after the conclusion of this AGREEMENT, then the **CITY** may remove same without further notice or liability therefore.

16. RULES AND REGULATIONS

16.1. **LICENSEE** shall observe and comply with all laws and ordinances of the **CITY** affecting **LICENSEE** business, including but not limited to, the City's noise ordinance.

16.2. No advertisements, signs, decorations, improvements or displays shall be placed in on or about the Premises without the prior written approval of the **CITY** through the DIRECTOR and any and all other necessary departments, boards or commissions of the **CITY**, including, but not limited to the Historic and Design Review Commission. **LICENSEE** agrees to remove all signs from the Premises when **LICENSEE** vacates the Premises.

16.3. **Non-Discrimination. Licensee understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.**

16.4. **LICENSEE** shall not, except as may otherwise be permitted by applicable laws and regulations, pay less than the minimum wage required by Federal and State statutes and **CITY** ordinances to persons employed in its operations hereunder.

16.5. **LICENSEE** agrees, upon provision by the **CITY** of notice to **LICENSEE** of any employee in **LICENSEE** operations that may be reasonably deemed to be discourteous, objectionable, or rude, to take immediate appropriate remedial action, including, but not limited to, removal of said employee from employment on the Premises.

16.6. **LICENSEE** shall not place speakers or amplified music on near the Licensed Premises. **LICENSEE** shall comply with **CITY'S** law pertaining to noise as it relates to operations or activities occurring on the Premises. **LICENSEE** agrees to comply with any requests by San Antonio Park Police, San Antonio Police, or City of San Antonio noise abatement officers. Failure to comply with the section may, at **CITY'S** option, constitute a default under this AGREEMENT.

17. CONFLICT OF INTEREST

17.1. **LICENSEE** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined therein, from having a financial interest in any contract with the City or any City agency

such as City owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s)l or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

17.2. **CITY** warrants and certifies, and this AGREEMENT is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City or any of its agencies such as City owned utilities.

18. RESERVATIONS: CITY

18.1. **CITY** reserves the right to enter the Premises at all reasonable times for the purpose of examining, inspecting or making repairs as herein provided. **LICENSEE** shall not be entitled to an abatement or reduction of Compensation by reason of such entry, nor shall said entry be deemed to be an actual or constructive eviction of **LICENSEE** from the Premises.

18.2. **CITY** Park Police and other safety personnel shall have the right to entry on and into the Premises as needed to investigate any circumstances, conditions, or person that may appear to be suspicious. **LICENSEE** shall cooperate with all reasonable requests by such personnel to facilitate public safety and orderly conduct. **LICENSEE** expressly understands and agrees that **CITY** has not agreed to act and does not act as an insurer of **LICENSEE** property and does not guarantee security against theft, vandalism, or injury or whatever nature and kind to persons or property.

19. QUIET ENJOYMENT

19.1. **CITY** covenants and agrees, subject to the provisions of this AGREEMENT, that **LICENSEE**, on paying the rental and all other charges in this AGREEMENT provided for and observing and performing the covenants, agreements, and conditions of this AGREEMENT on its part to be observed and performed, shall lawfully and quietly hold, occupy and enjoy the Licensed Premises during the term without hindrance or molestations of any kind whatsoever.

20. SEPARABILITY

20.1. If any clause or provision of this AGREEMENT is illegal, invalid or unenforceable under present or future laws effective during the term of this AGREEMENT, then and in that event it is the intention of the parties hereto that the remainder of this AGREEMENT shall not be affected thereby, and it is also the intention of the parties to this AGREEMENT that in lieu of each clause or provision of this AGREEMENT that is illegal, invalid, or unenforceable, there be added as part of this AGREEMENT a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

21. NOTICES

21.1. **Notices to CITY required or appropriate under this AGREEMENT shall be deemed sufficient if in writing and mailed, Registered or Certified mail, Postage Prepaid, addressed to:**

City of San Antonio
Center City Development Office
Downtown Operations Division
P.O. Box 839966
San Antonio, Texas 78283-3966

City of San Antonio
City Clerk's Office
P.O. Box 839966
San Antonio, Texas 78283-3966

Or to such other address as may have been designated in writing by the City Manager of the City of San Antonio from time to time.

Notices to **LICENSEE** shall be deemed sufficient if in writing and mailed, Registered or Certified mail, Postage Prepaid, addressed to **LICENSEE** at:

San Antonio RadioWorks, LLC
Attn: John Barger, President
8023 Vantage Drive, Suite 840
San Antonio, TX 78230
Phone 210-340-7080
Mobile 210-602-7080
E-Mail jwbarger@sbcglobal.net

Or at such other address on file with the City Clerk as **LICENSEE** may provide from time to time in writing to **CITY**.

22. PARTIES BOUND

22.1. If there shall be more than one party designated as **LICENSEE** in this AGREEMENT, they shall each be bound jointly and severally hereunder.

22.2. The covenants and agreements herein contained shall insure to benefit of and be binding upon the parties hereto; their respective heir, legal representatives, successors, and such assigns as have been approved by **CITY**.

23. RELATIONSHIPS OF PARTIES

23.1. Nothing contained herein shall be deemed or construed by the parities to hereto or by any third party as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationships between the parties hereto.

24. TEXAS LAW TO APPLY

24.1. THIS AGREEMENT SHALL BE CONSTRUED UNDER IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARITIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

25. GENDER

25.1. Words or any gender used in this AGREEMENT shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context other requires.

26. CAPTIONS

26.1. The captions contained in this AGREEMENT are for convenience of reference only and in no way limit or enlarge the terms and conditions of this AGREEMENT.

27. ENTIRE AGREEMENT/AMENDMENT

27.1. This AGREEMENT, together with its attached exhibits and the authorizing ordinance, in writing, constitutes the entire agreement between the parties, any other written or parole agreement with **CITY** being expressly waived by **LICENSEE**.

27.2. No amendment, modification, or alteration of the terms of this AGREEMENT shall be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

27.3. It is understood that the Charter of the **CITY** requires that all contracts with the **CITY** be in writing and adopted by ordinance. All amendments also need approval evidence by an ordinance.

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28. AUTHORITY

28.1 The signer of this AGREEMENT for **LICENSEE** hereby represents and warrants that he or she has full authority to execute this AGREEMENT on behalf of **LICENSEE.**

LICENSOR:

CITY OF SAN ANTONIO,
A Texas Municipal Corporation

By:_____
City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

LICENSEE:

SAN ANTONIO RADIOWORKS, LLC

JOHN BARGER
Printed Name

Signature

PRESIDENT
MEMBER / MANAGER
Title

8023 VANTAGE DR - SUITE 840
Address

SAN ANTONIO, TX 78230
City, State and Zip Code

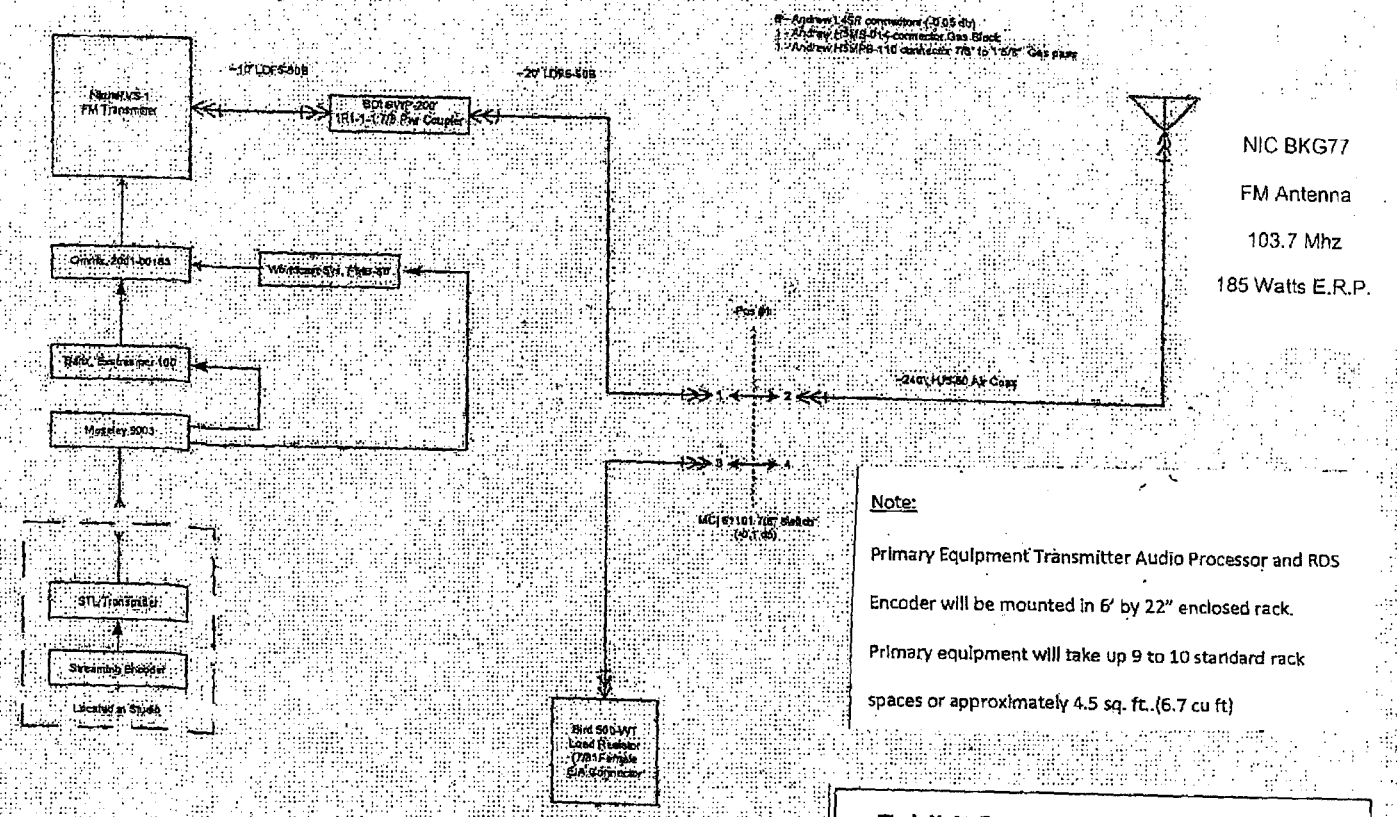
210-340-7080
Area Code/Telephone Number

EXHIBIT A
LICENSEE EQUIPMENT LISTING

EXHIBIT A - 103.7 MHz Licensee Equipment Listing (K279AB)

1. BW TX1000V2 Transmitter
2. Omnia 6EXI FM+HD Processor or equivalent.
3. FMB80, RDS encoder or equivalent.
4. Barix, Exsteamer or equivalent.
5. Moseley 9003 STL Receiver
6. ERI LPX-2E, FM low Power Broadcast Antenna
7. MCI 61101 or equivalent, coaxial switcher
8. Bird Electronic, 500 WT Load Resistor
9. BDI SWP-1R1- 1Watt meter /control switch
10. 240' Aprox. Andrew HJ5-50B 7/8", coax
11. 30' - Aprox Andre LDF-50 7/8" coax
12. 4' Open Grid Microwave Receive Dish Antenna
13. Other wire and cable as necessary to complete installation.

EXHIBIT B
LICENSEE EQUIPMENT ILLUSTRATION



Note:

Primary Equipment Transmitter Audio Processor and RDS Encoder will be mounted in 6' by 22" enclosed rack.

Primary equipment will take up 9 to 10 standard rack spaces or approximately 4.5 sq. ft.(6.7 cu ft)

Exhibit B – Tower of the Americas Translator System Layout
103.7 MHz -185 Watts ERP
05-19-2014 – Page 1 of 1

Attachment III

TOWER OF THE AMERICAS
ANTENNA LICENSE AGREEMENT

This License Agreement ("AGREEMENT") is entered into by and between the City of San Antonio (hereinafter called "**CITY**") and Wildcatter Wireless, LLC (hereinafter called "**LICENSEE**") for the purpose of operating and maintaining a radio broadcast translator K296GK and associated equipment (hereinafter called "EQUIPMENT") at the Tower of the Americas (hereinafter called "TOWER"), in HemisFair Park. This AGREEMENT is pursuant to approval by the City of San Antonio City Council (hereinafter called "City Council") through Ordinance Number _____approved on _____, 2014, and the following terms, conditions, and covenants:

1. LICENSED PREMISES

1.1. **CITY** hereby grants access to the following real property ("the Premises") to **LICENSEE** for use in operating and maintaining EQUIPMENT during the times indicated below:

1.1.1. Tower of the Americas, Level 6, 600 HemisFair Park Plaza, San Antonio, TX 78205

1.1.2. **LICENSEE** may operate and maintain approved EQUIPMENT in a location mutually approved by **CITY** and **LICENSEE**, **CITY** retains a superior right on the location and installation of all **LICENSEE** equipment, including the right to have **LICENSEE** move any equipment as necessary.

1.2. **LICENSEE** acknowledges that **CITY** has leased substantially the entire TOWER to WILLIE G'S POST OAK, INC. ("WILLIE G'S) and agrees that provided that **LICENSEE** is granted access to the Premises within thirty minutes, the access granted herein shall be subject to any reasonable regulation imposed by WILLIE G'S as further detailed in that lease agreement between the **CITY** and WILLIE G'S authorized and approved by City Council through Ordinance No. 99996 (the "Willie G's Lease"). Subject to the preceding, **LICENSEE** (as defined in Section 12.1) shall have access at all times, 24 hours per day, 7 days per week, to the TOWER and its EQUIPMENT during the term of this AGREEMENT, and **CITY** shall ensure that WILLIE G'S provides the access that is required to provide to **CITY'S** tenants pursuant to Willie G's Lease.

1.2.1. **LICENSEE** hereby agrees to the following arrangement for access to EQUIPMENT in the TOWER:

1.2.1.1. If **LICENSEE** requires access to the TOWER, Monday – Friday, between the hours of 7:45 a.m. – 4:30 p.m., **LICENSEE** must notify **CITY'S** Center City Development Office in order to coordinate access to the TOWER.

1.2.1.1.1. If **LICENSEE** requires access to the TOWER outside of the days and hours identified above, **LICENSEE** must notify **CITY'S** Park Police Dispatch at (210-207-8590) in order to coordinate access to the TOWER.

1.2.1.2. **LICENSEE** shall use reasonable efforts to notify the **CITY** at least twenty-four (24) hours in advance of the approximate time at which **LICENSEE** will need access to the Premises for scheduled maintenance.

1.2.1.3. Except for subcontractors which the **CITY** has approved, subcontractors used by **LICENSEE** shall at all times be escorted by a **LICENSEE** representative when on the Premises.

1.2.1.4. While on the Premises, personnel of **LICENSEE** must wear a suitable photo ID badge, to be provided by **LICENSEE**, that includes a nominal 1 ½ square inch personal photo, unique logo and labeling that identifies the employer and the employee by name, and a telephone number where confirmation of employment may be readily confirmed.

1.2.1.5. **LICENSEE** shall at all times assure that the **CITY** has a current list of all of its personnel who are authorized to be on the Premises on its behalf. The **CITY** shall be notified to immediately remove the name of any employee subject to disciplinary probation or termination, and shall be notified of additional personnel to be added to this list. **CITY** shall have the right to exclude any employee, agent, or representative of **LICENSEE** from **CITY** property, for reasonable cause, if deemed by the **CITY** to be necessary for proper security of its facilities or the safety of its employees.

1.2.1.6. **LICENSEE** shall park it maintenance truck or any other vehicle owned or used by **LICENSEE**, in a location as close as possible to the TOWER that does not impede TOWER operations and/or emergency lane areas. WILLIE G'S shall have final authority to determine parking locations.

1.3. **LICENSEE** agrees and specifically understands that this AGREEMENT is confined to the privilege to use the Premises and that the permission herein given does not grant **LICENSEE** any interest or estate in the Premises but is a mere personal privilege to conduct certain acts of a temporary nature upon the Premises, and that **CITY** retains dominion, possession, and control of said Premises, including access thereto, at all times, **CITY** reserves the right to enforce all necessary and proper rules for the management and operation of the Premises, and may eject from the Premises, any person or persons to accomplish such ends.

2. ACCEPTANCE AND CONDITION OF PREMISES

2.1. **LICENSEE** has had full opportunity to examine the grounds of the Premises and acknowledges that there is in and about them nothing dangerous to life, limb, or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. **LICENSEE** taking possession of the Premises shall be conclusive evidence of **LICENSEE'S** acceptance thereof in good order and satisfactory condition, and **LICENSEE** hereby accepts the Premises in its present AS IS, WHERE IS, WITH ALL FAULTS CONDITION as suitable for the purpose for which licensed. **LICENSEE** accepts the Premises with the full knowledge, understanding and agreement that **CITY** disclaims any warranty of suitability for **LICENSEE'S** intended commercial purposes.

2.2. **LICENSEE** agrees that no representations, respecting the condition of the Premises, and no promises to decorate, alter, repair or improve the Premises, either before or after the execution hereof, have been made by **CITY** or its agents to **LICENSEE** unless the same are contained herein or made part hereof by specific reference herein.

3. OPERATION AND MAINTENANCE OF ANTENNA EQUIPMENT

3.1. For the term of this AGREEMENT, **LICENSEE** will be allowed to operate and maintain, as space allows, within the Premises and as approved by **CITY** its EQUIPMENT as listed in **Exhibit A** and further illustrated in **Exhibit B**.

3.2. **LICENSEE** at its sole cost and expense shall replace EQUIPMENT, as they deem necessary after receiving written approval from **CITY** as referenced in Section 9.1. **CITY** shall ensure that **LICENSEE** has access to the TOWER for their installation needs. **LICENSEE** agrees to take all safety and security measures necessary to facilitate removal of obsolete equipment and installations of any new equipment, including street closures or partial barricading as approved by the passage of a City of San Antonio ordinance, where necessary. **LICENSEE** further agrees that fees related to the herein mentioned repairs and security measures will be at the sole expense of **LICENSEE**. All work must be coordinated with WILLIE G'S.

3.3. **LICENSEE** agrees to clean and remove all trash and debris, replace damaged and/or other damaged real or personal property during and at the conclusion of this AGREEMENT. **LICENSEE** will restore the TOWER to substantially the same condition at the conclusion of this AGREEMENT as it was prior to this AGREEMENT.

3.4. **LICENSEE'S** rights under this AGREEMENT are solely limited to the right to operate and maintain EQUIPMENT during the authorized time period. **LICENSEE** will not engage in any other type of activity while utilizing the Premises.

3.5. In the event that any equipment installed by **LICENSEE** on the Premises shall cause any interference with existing installations or future installations by **CITY** in the Tower during the term of hereof, **LICENSEE** shall correct said electromagnetic interference, or remove the equipment which is causing such interference within 48 hours of notification by **CITY**.

4. TERM AND TERMINATION

4.1. The term of this AGREEMENT shall be for five (5) years beginning with an effective date of September 1, 2014, and terminating August 31, 2019, unless sooner terminated pursuant to the provisions in Article 9. The right is expressly reserved to **CITY** acting through the City Council, to terminate this AGREEMENT for the following:

4.1.1. In the event this AGREEMENT is deemed to be inconsistent with the public use of the property; or

4.1.2. In the event the use of the Premises shall have been deemed a nuisance by a court of competent jurisdiction.

4.2. **LICENSEE** is hereby granted and shall, if not at that time in default of this AGREEMENT beyond the expiration of any applicable notice or cure period, have, for good and valuable consideration given, two (2) options to extend the term of this AGREEMENT for additional consecutive periods of five (5) years each after the expiration of the initial term hereof, on the same terms, covenants, and conditions, and subject to the same exceptions and reservations herein contained.

4.2.1. Extension shall be exercised by **LICENSEE'S** delivering to **CITY** in person or by the United States mail, at any time on or before ninety (90) days prior to the expiration date of the then current term of this AGREEMENT written notice of its desire to extend the term of this AGREEMENT as herein provided. And such shall be subject to CITY COUNCIL approval, which approval shall not be unreasonably withheld, as evidenced by passage of a City Ordinance.

4.3. Holding Over. In the event **LICENSEE** does not extend the term of this AGREEMENT as provided herein, and holds over beyond the expiration of the term hereof, or if said term is renewed and extended pursuant to Section 4.2 of this AGREEMENT, beyond the expiration of the five year renewal option period, as applicable, such holding over shall be deemed a month-to-month tenancy, at a compensation equal to double the amount of the compensation paid for the last month of the term of this AGREEMENT. Inclusion of the preceding sentence shall not be construed as **CITY'S** consent for the **LICENSEE** to hold over.

4.4. In the event **LICENSEE** shall default in the performance of any covenant of agreements contained herein and shall fail, following thirty (30) days' written notice of such default, to remedy same, save and except a ten (10) days notice period will apply in the case of default in the payment of rent.

4.5. In the event of termination by City Council in relation to 4.1.1 or 4.1.2 above, the **CITY** shall give **LICENSEE** notice in writing at least ninety (90) days prior to the termination date.

4.6. The **LICENSEE** shall have the right to terminate this AGREEMENT upon sixty (60) days notice to the **CITY** in the event the Federal Communications Commission ("FCC") changes the **LICENSEE'S** transmission site, reduces its effective radiated power or coverage, or terminates its broadcast authority. **LICENSEE** shall be obligated to pay the **CITY** the monthly license fee and remove its equipment prior to the end of the notice period.

5. COMPENSATION TO CITY

5.1. **LICENSEE** shall pay ("Compensation") to **CITY**, the following licensee fee in one (1) annual lump sum in advance of the Effective Date of this AGREEMENT and each annual anniversary thereafter or in monthly installments in advance on the first day of each month in accordance with the following schedule:

License Year	Annual License Fee	Monthly License Fee
9/1/2014 – 8/31/2015	$22,960.00	$1,913.33
9/1/2015 – 8/31/2016	$23,648.80	$1,970.73
9/1/2016 – 8/31/2017	$24,358.26	$2,029.86
9/1/2017 – 8/31/2018	$25,089.01	$2,090.75
9/1/2018 – 8/31/2019	$25,841.68	$2,153.47

5.2. Compensation for extension periods as provided by Section 4.2 will be at a rate increased annually by 3.00%.

5.3. Payments are to be submitted to:

City of San Antonio
Revenue Division
P.O. Box 839975
San Antonio, Texas 78283-3975

6. RECORDS, REPORTS, AND AUDIT RIGHTS

6.1. **LICENSEE** shall maintain, in San Antonio, Texas, books and records reflecting operations hereunder in accordance with generally accepted accounting principles for three (3) years after the final payment under this AGREEMENT or until all audits, if any, are complete and findings on all claims have been finally resolved, whichever is the greater period of time. Such books, and records, together with any other documentation necessary for verification of **LICENSEE'S** compliance with the terms of this AGREEMENT, shall be made available to **CITY**, upon reasonable request. At **CITY'S** expense, the **CITY** shall have the right to conduct an audit, examine and make excerpts or transcripts from said books, records, and documentation to verify the financial activity for the licensed year.

7. LICENSEE'S EMPLOYEES

7.1. **LICENSEE** shall provide and train, at its sole cost and expense, a sufficient number of employees to comply with its contractual obligations hereunder. Such employees of **LICENSEE** shall in no way be construed as **CITY** employees nor shall they be entitled to any compensation or benefits from or by the City.

7.2. **LICENSEE** shall develop and enforce a policy of employee standards for on-the-job conduct, appearance, and demeanor; this shall include official **LICENSEE** identification for all employees.

7.3. **LICENSEE** must ensure that **LICENSEE'S** employees are properly attired in dress that is clean and neat at all times.

7.4. **LICENSEE** accepts full responsibility for filing all applicable tax returns (if any) and paying all applicable taxes (if any), that may be required by law or due for **LICENSEE'S** employees under the terms and conditions of this AGREEMENT.

8. UTILITIES

8.01 **LICENSEE** shall during the term hereof, pay all charges for telephone, gas, electricity, water, or any other power or utilities used by it for or on the PREMISES before they shall become delinquent and shall hold the **CITY** harmless from any liability therefore, **LICENSEE** shall cause any utilities for the PREMISES and the Equipment (including any necessary air conditioning) to be separately metered. Payment of any utility charges must be remitted within ten (10) days of receipt of invoice, whether such invoice comes from **CITY** or from WILLIE G'S or any other future tenant of **CITY**.

8.02 **LICENSEE** shall be authorized to install, at its own expense, air conditioning in the space occupied by their equipment on the PREMISES to cause the PREMISES to comply with applicable federal, state and local regulations or for its own purposes.

8.03 The **CITY** agrees that **LICENSEE** will have the ability to be provided back-up power generation sufficient to fully operate its equipment in the event its primary source of power is interrupted if said work is coordinated with WILLIE G'S and any additional costs of upgrading the generator power necessary to facilitate the needs of **LICENSEE** is borne by **LICENSEE** . If in case of emergency during a power outage, it is at the CITY'S discretion to allow all generator power to be routed to the elevators to allow the public to be removed from the PREMISES

9. IMPROVEMENTS

9.1. **LICENSEE** shall not construct, or allow to be constructed, any improvements or structures on the Premises nor shall **LICENSEE** make or allow to be made, any alterations to the Premises without the prior written approval of **CITY** through the Center City Development Office's Director (hereinafter "DIRECTOR") and any and all other necessary departments, boards, commissions, or City Council, including, but not limited to, the Historic and Design Review Commission.

9.2. **LICENSEE** covenants that it shall not bind, or attempt to bind, **CITY** for the payment of any money in connection with the construction, repair, alteration, addition or reconstruction in on or about the Licensed Premises. Further, **LICENSEE** agrees to remove, within thirty (30) days after filing, by payment or provision for bonding, any mechanic's or material man's lien filed against the Licensed Premises and to indemnify to extent allowed by law, **CITY** in connections with such liens to the extent of any damages, expenses, attorney's fees, or court costs incurred by **CITY**.

10. TERMINATION PROVISIONS

10.1. The **CITY** shall have the authority to terminate this AGREEMENT in the event that **LICENSEE** does not comply with the terms listed herein, and includes, but is not limited to:

10.1.1. **LICENSEE** personnel not in compliance with the terms of this AGREEMENT;

10.1.2. Engaging in any sub-licensing activities that do not have prior written approval by **CITY**;

10.1.3. Failure to pay Compensation fees to **CITY** within given due date period;

10.1.4. Failure to procure and provide proof of required insurance coverage and documentation as provided herein.

11. MAINTENANCE OF PROPERTY

11.1. **LICENSEE** shall, during the term of this AGREEMENT, keep or cause to be kept the Premises free of litter, trash, paper, and other waste caused by **LICENSEE** use and shall

place same in standard trash containers, provided by **LICENSEE**, and shall conform to all applicable garbage, sanitary and health regulations of the City.

11.2. Other than as provided herein, **LICENSEE** shall be responsible for the condition of the Premises immediately adjacent and attributable to **LICENSEE'S** use during the term of this AGREEMENT. **LICENSEE** shall repair any damage to the Premises caused by **LICENSEE** and its invitees, and shall maintain, or caused to be maintained, the Premises in a clean, neat, attractive and sanitary condition.

11.3. **LICENSEE** will, at the termination of this AGREEMENT, return the Premises to **CITY** in as good condition as at the commencement of the term hereof.

12. ASSIGNMENT AND SUBLETTING

12.1. If not at that time of default, this AGREEMENT may be assigned by **LICENSEE** to subsequent FCC license-holder or permit-holder of **LICENSEE'S** FM translator, in which case **LICENSEE** shall be released from liability, but the new license-holder or permit-holder of the FM translator shall be bound by the same terms and conditions as **LICENSEE**. Such assignment shall be made after giving thirty (30) days written notice, as set forth herein, to **CITY** and receiving written approval by **CITY** through the DIRECTOR which shall not be unreasonable withheld.

12.2. Without the prior written consent of **LICENSEE**, **CITY** shall have the right to transfer and assign, in whole or in part, any of its rights and obligations under this AGREEMENT and in the building and property referred to herein; and to the extent that such assignee assumes **CITY'S** obligations hereunder, **CITY** shall, by virtue of such assignment, be released from such obligation.

12.3. The receipt by **CITY** of Compensation from an assignee, or occupant of the Premises shall not be deemed a waiver of the covenant in this AGREEMENT against assignment and or an acceptance of the assignee, or occupant, or a release of **LICENSEE** from further observance or performance by **LICENSEE** of the covenants contained in this AGREEMENT. No provision of this AGREEMENT shall be deemed to have been waived by **CITY** unless such waiver is in writing signed by **CITY**.

13. INDEMNIFICATION

13.1. **LICENSEE** covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the **CITY** and the elected officials, employees, officers, directors, volunteers and representatives of the **CITY**, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the **CITY** directly or indirectly arising out of, resulting from or related to **LICENSEE'S** activities under this AGREEMENT, including any acts or omissions of **LICENSEE**, any agent, officer, director, representative, employee, consultant or subcontractor of **LICENSEE**, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT, all without however, waiving any governmental immunity available to the **CITY** under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL

APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF **CITY**, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF **CITY**, UNDER THIS AGREEMENT. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. **LICENSEE** shall advise the **CITY** in writing within 24 hours of any claim or demand against the **CITY** or **LICENSEE** known to **LICENSEE** related to or arising out of **LICENSEE'S** activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at **LICENSEE'S** cost. The **CITY** shall have the right, at its option and at its own expense, to participate in such defense without relieving **LICENSEE** of any of its obligations under this paragraph.

13.2. It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by **LICENSEE** to INDEMNIFY, PROTECT and HOLD HARMLESS, the **CITY** from the consequences of the **CITY'S** OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the **CITY** is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the **CITY** is the sole cause of the resultant injury, death, or damage. **LICENSEE** further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE **CITY** AND IN THE NAME OF THE **CITY**, any claim or litigation brought against the **CITY** and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

14. INSURANCE REQUIREMENTS

14.1. Any and all employees, representatives, agents or volunteers of **LICENSEE** while engaged in the performance of any work required by the **CITY** or any work related to a License of space or Concession Agreement with the **CITY** shall be considered employees, representatives, agents or volunteers of **LICENSEE** only and not of the **CITY**. Any and all claims that may result from any obligation for which **LICENSEE** may be held liable under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or under any similar law on behalf of said employees, representatives, agents or volunteers shall be the sole obligation and responsibility of **LICENSEE**.

14.2. Prior to the commencement of any work under this AGREEMENT, **LICENSEE** shall furnish an original completed Certificate(s) of Insurance, including endorsements, to the DIRECTOR, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s), and endorsements, must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the **CITY**. The **CITY** shall have no duty to pay or perform under this AGREEMENT until such certificate shall have been delivered to the **CITY'S** DIRECTOR, and no officer or employee shall have authority to waive this requirement.

14.3. **LICENSEE'S** financial integrity is of interest to **CITY**, therefore, subject to **LICENSEE'S** right to maintain reasonable deductibles in such amounts as are approved by **CITY**, **LICENSEE** shall obtain and maintain in full force and effect for the duration of this AGREEMENT, and any extension hereof, at **LICENSEE'S** sole expense, insurance coverage written, on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNT
Workers' Compensation and Employers Liability	Statutory $1,000,000/$1,000,000/$1,000,000
Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability f. Environmental Impairment/Impact-sufficiently broad to cover disposal liability.	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage.
Comprehensive Automobile Liability* a. Owned/Leased Vehicles b. Non-owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence
Property Insurance: For physical damage to the property of **LICENSEE**, including improvements and betterment to the Licensed Premises	Coverage for a minimum of eighty percent (80%) of the replacement cost of **LICENSEE'S** property

*If Applicable

14.4. **LICENSEE** agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

14.4.1. Name the **CITY** and its officers, employees, volunteers and elected representatives as additional insured, by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the **CITY**, with the exception of the workers' compensation and professional liability polices;

14.4.2. Provide for an endorsement that the "other insurance" clause shall not apply to the **CITY** of San Antonio where the **CITY** is an additional insured shown on the policy;

14.4.3. Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the **CITY**.

14.4.4. Provide thirty (30) calendar days advance written notice directly to **CITY** of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for non-payment of premium. All notices shall be given to the **CITY** at the following address:

City of San Antonio
Center City Development Office
Downtown Operations Division
P.O. Box 839966
San Antonio, Texas 78283-3966

14.4.5. Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, **LICENSEE** shall provide a replacement Certificate of Insurance and applicable endorsements to **CITY**. **CITY** shall have the option to suspend consultant's performance should there be a lapse in coverage at any time during this AGREEMENT. Failure to provide and to maintain the required insurance shall constitute a material breach of this AGREEMENT.

14.5. The **CITY** may upon **LICENSEE'S** failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the **CITY** shall have the right to order **LICENSEE** to stop the use of the Premises hereunder until **LICENSEE** demonstrates compliance with the requirements hereof.

14.6. Nothing herein contained shall be construed as limiting in any way the extent to which **LICENSEE** may be held responsible for payments of damages to persons or property resulting from **LICENSEE'S** or its subcontractors' performance of the work covered under this AGREEMENT.

14.7. It is agreed that Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this AGREEMENT.

14.8. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this AGREEMENT.

14.9. All personal property placed in the Premises shall be at the sole risk of **LICENSEE**. **CITY** shall not be liable, and **LICENSEE** waives all claims for any damage either to the person or property of **LICENSEE** or to other persons due to the Premises or any part of appurtenances thereof becoming out of repair or arising from bursting or leaking of water, gas, waste pipes, or defective wiring or excessive or deficient electrical current; or from any act or omission of employees, or other occupants of the Premises, or any other persons; due to the happening of any accident in or about Premises. **LICENSEE** shall save and hold harmless **CITY** from any claims arising out of damage to **LICENSEE'S** property or damage to **LICENSEE'S** business, including subrogation claims by **LICENSEE'S** insurers.

15. HOLD HARMLESS AND NO LIABILITY FOR LOSSES INCURRED BY LICENSEE

15.1. **LICENSEE** specifically waives any claim for any loss by **LICENSEE** of funds/revenues, merchandise, equipment, supplies, materials or other goods owned by **LICENSEE** whether due to theft, robbery, break-in, vandalism, acts of God or any other causes.

15.2. **LICENSEE** agrees to waive any claim against the **CITY** for any theft, damages or destruction of equipment, goods, and/or other property of **LICENSEE** so left on the Premises after **LICENSEE** vacates the Premises. If said equipment, goods and any other property placed by **LICENSEE** upon the Premises are not removed by **LICENSEE** within one week after the conclusion of this AGREEMENT, then the **CITY** may remove same without further notice or liability therefore.

16. RULES AND REGULATIONS

16.1. **LICENSEE** shall observe and comply with all laws and ordinances of the **CITY** affecting **LICENSEE** business, including but not limited to, the City's noise ordinance.

16.2. No advertisements, signs, decorations, improvements or displays shall be placed in on or about the Premises without the prior written approval of the **CITY** through the DIRECTOR and any and all other necessary departments, boards or commissions of the **CITY**, including, but not limited to the Historic and Design Review Commission. **LICENSEE** agrees to remove all signs from the Premises when **LICENSEE** vacates the Premises.

16.3. **Non-Discrimination. Licensee understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.**

16.4. **LICENSEE** shall not, except as may otherwise be permitted by applicable laws and regulations, pay less than the minimum wage required by Federal and State statutes and **CITY** ordinances to persons employed in its operations hereunder.

16.5. **LICENSEE** agrees, upon provision by the **CITY** of notice to **LICENSEE** of any employee in **LICENSEE** operations that may be reasonably deemed to be discourteous, objectionable, or rude, to take immediate appropriate remedial action, including, but not limited to, removal of said employee from employment on the Premises.

16.6. **LICENSEE** shall not place speakers or amplified music on near the Licensed Premises. **LICENSEE** shall comply with **CITY'S** law pertaining to noise as it relates to operations or activities occurring on the Premises. **LICENSEE** agrees to comply with any requests by San Antonio Park Police, San Antonio Police, or City of San Antonio noise abatement officers. Failure to comply with the section may, at **CITY'S** option, constitute a default under this AGREEMENT.

17. CONFLICT OF INTEREST

17.1. **LICENSEE** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined therein, from having a financial interest in any contract with the City or any City agency such as City owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s)l or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

17.2. **CITY** warrants and certifies, and this AGREEMENT is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City or any of its agencies such as City owned utilities.

18. RESERVATIONS: CITY

18.1. **CITY** reserves the right to enter the Premises at all reasonable times for the purpose of examining, inspecting or making repairs as herein provided. **LICENSEE** shall not be entitled to an abatement or reduction of Compensation by reason of such entry, nor shall said entry be deemed to be an actual or constructive eviction of **LICENSEE** from the Premises.

18.2. **CITY** Park Police and other safety personnel shall have the right to entry on and into the Premises as needed to investigate any circumstances, conditions, or person that may appear to be suspicious. **LICENSEE** shall cooperate with all reasonable requests by such personnel to facilitate public safety and orderly conduct. **LICENSEE** expressly understands and agrees that **CITY** has not agreed to act and does not act as an insurer of **LICENSEE** property and does not guarantee security against theft, vandalism, or injury or whatever nature and kind to persons or property.

19. QUIET ENJOYMENT

19.1. **CITY** covenants and agrees, subject to the provisions of this AGREEMENT, that **LICENSEE**, on paying the rental and all other charges in this AGREEMENT provided for and observing and performing the covenants, agreements, and conditions of this AGREEMENT on its part to be observed and performed, shall lawfully and quietly hold, occupy and enjoy the Licensed Premises during the term without hindrance or molestations of any kind whatsoever.

20. SEPARABILITY

20.1. If any clause or provision of this AGREEMENT is illegal, invalid or unenforceable under present or future laws effective during the term of this AGREEMENT, then and in that event it is the intention of the parties hereto that the remainder of this AGREEMENT shall not be affected thereby, and it is also the intention of the parties to this AGREEMENT that in lieu of each clause or provision of this AGREEMENT that is illegal, invalid, or

unenforceable, there be added as part of this AGREEMENT a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

21. NOTICES

21.1. **Notices to CITY required or appropriate under this AGREEMENT shall be deemed sufficient if in writing and mailed, Registered or Certified mail, Postage Prepaid, addressed to:**

City of San Antonio
Center City Development Office
Downtown Operations Division
P.O. Box 839966
San Antonio, Texas 78283-3966

City of San Antonio
City Clerk's Office
P.O. Box 839966
San Antonio, Texas 78283-3966

Or to such other address as may have been designated in writing by the City Manager of the City of San Antonio from time to time.

Notices to **LICENSEE** shall be deemed sufficient if in writing and mailed, Registered or Certified mail, Postage Prepaid, addressed to **LICENSEE** at:

Wildcatter Wireless, LLC
Attn: Kevin O. Butler, Manager/Member
550 West Texas Avenue, Suite 660
Midland, TX 79701
Phone: 432-682-1178
Mobile: 432-352-5621
Email: kevnbutlr@aol.om

Or at such other address on file with the City Clerk as **LICENSEE** may provide from time to time in writing to **CITY**.

22. PARTIES BOUND

22.1. If there shall be more than one party designated as **LICENSEE** in this AGREEMENT, they shall each be bound jointly and severally hereunder.

22.2. The covenants and agreements herein contained shall insure to benefit of and be binding upon the parties hereto; their respective heir, legal representatives, successors, and such assigns as have been approved by **CITY**.

23. RELATIONSHIPS OF PARTIES

23.1. Nothing contained herein shall be deemed or construed by the parities to hereto or by any third party as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationships between the parties hereto.

24. TEXAS LAW TO APPLY

24.1. THIS AGREEMENT SHALL BE CONSTRUED UNDER IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARITIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

25. GENDER

25.1. Words or any gender used in this AGREEMENT shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context other requires.

26. CAPTIONS

26.1. The captions contained in this AGREEMENT are for convenience of reference only and in no way limit or enlarge the terms and conditions of this AGREEMENT.

27. ENTIRE AGREEMENT/AMENDMENT

27.1. This AGREEMENT, together with its attached exhibits and the authorizing ordinance, in writing, constitutes the entire agreement between the parties, any other written or parole agreement with **CITY** being expressly waived by **LICENSEE**.

27.2. No amendment, modification, or alteration of the terms of this AGREEMENT shall be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

27.3. It is understood that the Charter of the **CITY** requires that all contracts with the **CITY** be in writing and adopted by ordinance. All amendments also need approval evidence by an ordinance.

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28. AUTHORITY

28.1 The signer of this AGREEMENT for **LICENSEE** hereby represents and warrants that he or she has full authority to execute this AGREEMENT on behalf of **LICENSEE.**

LICENSOR:

CITY OF SAN ANTONIO,
A Texas Municipal Corporation

By:_____
City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

LICENSEE:

WILDCATTER WIRELESS, LLC

KEVEN O. BUTLER
Printed Name

Signature

SOLE MEMBER/MANAGER
Title

550 WEST TEXAS AVE, SUITE 660
Address

MIDLAND, TX 79701
City, State and Zip Code

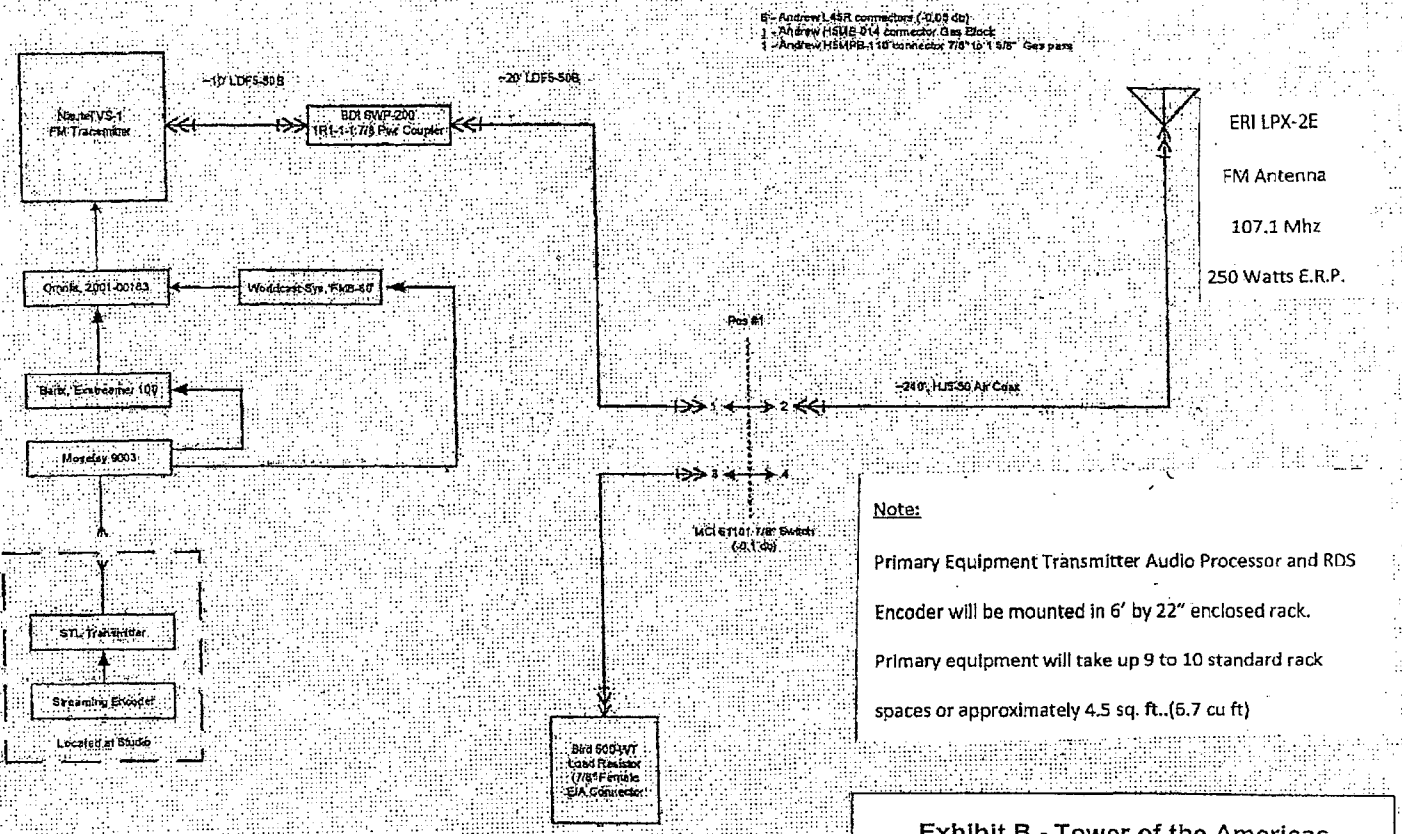
432-682-1178
Area Code/Telephone Number

EXHIBIT A
LICENSEE EQUIPMENT LISTING

EXHIBIT A - 107.1 MHz Licensee Equipment Listing (K296GK)

1. BW TX1000V2 Transmitter
2. Omnia 6EXI FM+HD Processor or equivalent.
3. FMB80, RDS encoder or equivalent.
4. Barix, Exsteamer or equivalent.
5. Moseley 9003 STL Receiver
6. ERI LPX-2E, FM low Power Broadcast Antenna
7. MCI 61101 or equivalent, coaxial switcher
8. Bird Electronic, 500 WT Load Resistor
9. BDI SWP-1R1- 1Watt meter /control switch
10. 240' Aprox. Andrew HJ5-50B 7/8", coax
11. 30' - Aprox Andre LDF-50 7/8" coax
12. 4' Open Grid Microwave Receive Dish Antenna
13. Other wire and cable as necessary to complete installation.

EXHIBIT B
LICENSEE EQUIPMENT ILLUSTRATION



Note:

Primary Equipment Transmitter Audio Processor and RDS Encoder will be mounted in 6' by 22" enclosed rack.

Primary equipment will take up 9 to 10 standard rack spaces or approximately 4.5 sq. ft..(6.7 cu ft)

Exhibit B - Tower of the Americas Translator System Layout
107.1 MHz – 250 Watts ERP
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