



THE NEW YORK STATE BROADCASTERS ASSOCIATION

1805 Western Avenue, Albany, NY 12203

**STATION REQUEST FOR ALTERNATIVE BROADCAST INSPECTION
AND
AGREEMENT FOR SUCH INSPECTION**

INFORMATION TO BE COMPLETED ONLY BY THE ASSOCIATION

DATE OF THIS CONTRACT: _____ . **ASSOCIATION INITIALS:** _____

ESTIMATED DATE OF INSPECTION: _____ . **ASSOCIATION INITIALS:** _____

INFORMATION TO BE COMPLETED ONLY BY THE STATION OPERATOR (GENERAL MANAGER)

On behalf of the Station(s) identified in Exhibit A attached hereto (individually and collectively, the "Station"), _____ (the "Station Operator") hereby requests and hereby authorizes the New York State Broadcasters Association (the "Association") to cause the transmitter site(s) and studio site(s) of the Station, to be inspected pursuant to that certain "Agreement for State Broadcasters Association Sponsored Alternative Broadcast Inspection Program," (the "FCC ABIP Agreement") dated as of August 15, 2003, by and between the Association and the Enforcement Bureau (the "Bureau") of the Federal Communications Commission (the "Commission" or the "FCC")(the "ABIP Program").

WHEREAS, the Association is willing to cause the Station to be inspected, and the Station Operator is willing to have the Station inspected, pursuant to the ABIP Program (the "ABIP Inspection") on the following terms and conditions.

In consideration of the foregoing, and the mutual agreements set forth herein, the Station Operator and the Association, intending to be legally bound, hereby agree as follows:

1. Authority and Binding Nature. Each party represents and warrants to the other that it has all requisite power and authority to enter into this Agreement and to perform as contemplated

hereunder and that the person executing and delivering this Agreement for each party is duly authorized to legally bind such party.

2. Effective Date and Term of Agreement. This Agreement shall become effective on that date which has been inserted by the Association at the top of the first page of this Agreement (the "Contract Date") so long as the signatures of both the Association and the Station Operator are evidenced below. The term of this Agreement (the "Term") shall begin on the Contract Date and continue without interruption for a period of one (1) year unless earlier terminated by either party hereto pursuant to Section 6 hereof.

3. Fees/Expenses and Payment Terms. The following payment terms shall apply.

a. NYSBA Member Stations in Good Standing: There is no charge when the station being inspected is a member in good standing. The Station Operator warrants that it is and will remain a member in good standing of the New York State Broadcasters Association. As a member in good standing, the station shall: 1) remain current with its dues payments, and 2) participate in the Public Outreach Partnership program (formerly called the Non-Commercial Sustaining Announcement Program) by broadcasting public service advertising spots consistent with the instructions provided by NYSBA.

b. Non-Member Stations: Station Operators, including those Station Operators that do not meet the above referenced "good standing" requirements, shall be charged a fee for the inspection. The Station Operator shall timely and fully pay the applicable amounts charged by the Association and the ABIP Inspector in connection with the ABIP Inspection, in accordance with the fees/expenses, and payment terms, set forth in Exhibit B, attached hereto. The Station Operator acknowledges and agrees that the timely and full payment of all fees/expenses associated with the ABIP Inspection shall be a condition precedent to the issuance of a Certificate of Compliance to the Station.

4. Copy of the FCC ABIP Agreement. The Station Operator acknowledges and agrees that, as required by the FCC ABIP Agreement, the Association has provided the Station Operator with a true and complete copy of the FCC ABIP Agreement at the same time that it has provided the Station Operator with this Agreement.

5. Description of the ABIP Program.

a. The Association, in the exercise of its discretion, has selected one or more persons whom it believes in good faith have the requisite competence, experience, training, and integrity to perform properly the duties as an inspector under the ABIP Program (the "ABIP Inspector"). The Station Operator acknowledges and agrees that the relationship of the ABIP Inspector to the Association is that of an independent contractor, and not as of an employee, agent or joint venture. The Station Operator shall promptly notify the Association if it has any genuine concerns about the competence or integrity of the ABIP Inspector who conducts the inspection of the Station. If requested by the ABIP Inspector, the Station Operator shall provide the ABIP Inspector with use of such test equipment, in proper calibration, necessary to demonstrate compliance with the Commission's rules and regulations. In addition, the Station Operator shall provide the ABIP Inspector with full access to the premises, facilities, equipment, on-line public files, on line political files and other files to be inspected and the necessary Station staff support

to accomplish the ABIP Inspection in an efficient, complete, and timely fashion. The Station Operator and the Station's staff shall fully cooperate, in a courteous fashion, with the Association and the ABIP Inspector at all times in connection with any ABIP Inspection.

b. During the inspection of the Station under this ABIP Program, the ABIP Inspector shall conduct a standard FCC Enforcement Bureau full station inspection. Such inspection shall not include an inspection of a Station's conformance with any regulations relating either to (i) equal employment opportunity, (ii) on-line public file or (iii) on-line political file, except to determine whether the Station maintains Annual EEO Public File Reports (if required) as well as the on-line public file and political file that are available to the public upon request. Station Operator understands that participation in the ABIP program does not preclude the FCC from examining the station's online public file and on line political file at any time. Furthermore, neither this Agreement nor the inspection will cover inspection of, or analysis for, compliance with the laws, rules, regulations or policies of the FCC or of any other Federal, state or local governmental authority relating to environmental matters, including, but not limited, to RF exposure.

c. The Station Operator acknowledges and agrees that, for purposes of this Agreement and the FCC ABIP Agreement, the Station will be considered the holder of a valid Certificate of Compliance only if

(i) upon the Association's issuance of the Certificate of Compliance to the Station, the Association shall have simultaneously sent a copy of the Certificate of Compliance to the pertinent FCC District or Resident Agent Office either by certified U.S. mail, by overnight delivery by private courier, or by standard U.S. mail if such mailing is preceded either by an electronic mail message indicating that the Certificate has been issued or by transmission of a facsimile of the Certificate (it is the intent of the Association to timely provide the pertinent FCC District or Resident Agent Office with a copy of such Certificate of Compliance),

(ii) upon the Station's receipt of the Certificate of Compliance, the Station continuously displays its Certificate of Compliance either in plain view (*e.g.*, on the wall in the entrance area of the Station's main studio) or in the Station's FCC authorizations binder at its main studio, and

(iii) the Station verbally informs any person who enters the main studio of the Station and identifies himself or herself as an FCC inspector seeking to conduct an FCC inspection that the Station holds a valid Certificate of Compliance (actions taken pursuant to Section 5(c)(ii) and (iii), collectively, "Publicly Disclosed" or "Public Disclosure").

d. The Station Operator acknowledges and agrees that, for purposes of this Agreement and the FCC ABIP Agreement, the Station shall have the option to receive the benefits described in paragraphs 4(h) and 4(i) of the FCC ABIP Agreement, and as described below, for the "Grace Period," as defined below, but only so long as

(i) this Agreement is Publicly Disclosed, and

(ii) the Association has notified the FCC that it has entered this Agreement with the Station using the notification procedures of Section 5(c)(i) above, either (i) within thirty (30)

days of September 29, 2003, where the Contract Date is a date that is earlier than September 29, 2003, or (ii) within thirty (30) days of the Contract Date where the Contract Date is a date that is the same as of later than September 29, 2003.

The "Grace Period" shall commence on the Contract Date. The "Grace Period" shall expire at the end of the one hundred and fifty (150) day period beginning on the Contract Date and the Station shall thereafter no longer be eligible to receive the benefits of paragraphs 4(h) and 4(i) of the FCC ABIP Agreement unless a valid Certificate of Compliance has been issued to the Station prior to the end of the "Grace Period" and such Certificate is being Publicly Disclosed by the Station. THE OWNER ACKNOWLEDGES AND AGREES THAT, BY ENTERING INTO THIS AGREEMENT, UNLESS THE STATION OPERATOR HAS CHECKED "NO" ON THE FIRST PAGE OF THIS AGREEMENT AND SET FORTH THE INITIALS OF THE PERSON EXECUTING THIS AGREEMENT ON BEHALF OF THE STATION OPERATOR, THE STATION OPERATOR HEREBY EXERCISES ITS OPTION PURSUANT TO THIS SUBSECTION AND EXPRESSLY DIRECTS THE ASSOCIATION TO GIVE THE FCC NOTICE THAT THE STATION OPERATOR HAS ENTERED INTO THIS AGREEMENT FOR THE STATION, THE DATE OF THIS AGREEMENT AND THE ESTIMATED DATE OF INSPECTION, AS NOTED ON THE FIRST PAGE OF THIS AGREEMENT. ONLY IF THE STATION OPERATOR HAS CHECKED "NO" ON THE EIGHTH PAGE OF THIS AGREEMENT AND SET FORTH THE INITIALS OF THE PERSON EXECUTING THIS AGREEMENT ON BEHALF OF THE STATION OPERATOR, THE ASSOCIATION WILL NOT SO NOTIFY THE FCC IN WHICH CASE THE STATION WILL NOT RECEIVE THE BENEFITS OF PARAGRAPHS 4(H) AND (4)(I) OF THE FCC ABIP AGREEMENT WHICH BENEFITS ARE ALSO DESCRIBED BELOW. THE STATION OPERATOR ALSO ACKNOWLEDGES AND AGREES THAT THE ESTIMATED DATE OF THE INSPECTION IS JUST THAT, A GOOD FAITH ESTIMATE, AND DOES NOT CONSTITUTE A WARRANTY OR COVENANT OF ANY TYPE. THE STATION OPERATOR FURTHER ACKNOWLEDGES AND AGREES THAT IF EITHER (i) IT DOES NOT EXERCISE ITS OPTION, OR (ii) IT DOES EXERCISE ITS OPTION BUT THE INSPECTION PROCESS DOES NOT RESULT IN THE ISSUANCE OF A CERTIFICATE OF COMPLIANCE WITHIN ONE HUNDRED AND FIFTY (150) DAYS COMMENCING ON THE CONTRACT DATE, THE STATION IS AT RISK THAT THE STATION COULD BE INSPECTED BY THE FCC FOR ANY REASON. Unless the Station Operator shall exercise its option hereunder, nothing in this Agreement shall require the Association, the ABIP Inspector or the Station to provide the FCC with notice that the Station is under contract to be inspected under this ABIP Program.

e. The Station Operator acknowledges and agrees that upon the completion of an inspection by the ABIP Inspector, the ABIP Inspector shall promptly inform the Station in writing of his or her findings and conclusions. The failure of the ABIP Inspector to make and promptly forward his or her findings and conclusions to the station after the ABIP Inspection shall be reported to the Association and shall, in all circumstances, prevent the Association from issuing a Certificate of Compliance to the Station based on such inspection. The Association shall use good faith efforts to maintain the confidentiality of the findings and conclusions of any ABIP Inspection. If the FCC or any other governmental or nongovernmental entity requests from the Association information relating to the findings or conclusions of any ABIP Inspection of the Station, the Association will promptly notify the Station Operator, and otherwise cooperate with the Station Operator relating to such request. This Association obligation shall survive indefinitely the expiration or termination of this Agreement.

f. The Station Operator acknowledges and agrees that if, as a result of an ABIP Inspection, the ABIP Inspector discovers no existing or potential non-conformance with the Commission's regulations, the ABIP Inspector shall promptly notify the Station and the Association in writing, in which case the Association shall promptly send to the Station the original executed copy of the Station's Certificate of Compliance so long as the Station Operator has remitted to the Association all amounts due and owing by the Owner in connection with the ABIP Inspection. Whenever a Certificate of Compliance is issued by the Association to the Station, the Association shall also simultaneously send a copy of the Certificate of Compliance to the pertinent FCC District or Resident Agent Office identified in the attachment to the FCC ABIP Agreement.

g. The Station Operator acknowledges and agrees that if, as a result of an ABIP Inspection, the ABIP Inspector discovers any existing or potential nonconformance with the Commission's regulations, the ABIP Inspector shall promptly notify the Station in writing, in which case the Station shall promptly remedy the matter and immediately thereafter report such remedial action to the ABIP Inspector. The ABIP Inspector shall have the full discretion to determine whether, in such circumstance, a re-inspection of the Station is required. If the ABIP Inspector is satisfied that adequate remedial action has been taken and has also determined, in the exercise of his or her discretion, that a re-inspection is not required, the ABIP Inspector shall promptly notify the Station and the Association in which case the Association shall promptly send the Station the original executed copy of the Station's Certificate of Compliance. If the ABIP Inspector, in the exercise of his or her discretion, determines that a re-inspection is required, such re-inspection shall be conducted by the same ABIP Inspector, if he or she is reasonably available. If he or she is not reasonably available, the inspection shall be conducted by a different ABIP Inspector. The ABIP Inspector and the Association shall follow the certificate issuance/notification procedure contemplated for an initial ABIP Inspection. Where a re-inspection is required, a fully satisfactory re-inspection of the Station shall be a condition precedent to the issuance of a Certificate of Compliance to the Station.

h. The Station Operator acknowledges and agrees that the FCC ABIP Agreement provides that, except as expressly provided below, upon receipt by the Bureau of a true and correct copy of a valid Certificate of Compliance for the Station and Public Disclosure of the Station's valid Certificate of Inspection, the Bureau may determine not to conduct any type of inspection, investigation, or audit of the Station for a period of three (3) years from the date of the Certificate of Compliance. However, notwithstanding the foregoing, the Bureau may conduct an inspection of the Station if such inspection (i) relates to tower safety issues ("Targeted Tower Safety Inspection"), (ii) was initiated by a complaint against the Station ("Complaint Driven Inspection") or (iii) is an inspection relating to its on-line public file, on-line political file or EEO materials required to be in the Station's public inspection file. The scope of a Targeted Tower Safety Inspection shall be limited to the antenna site(s) of the Station and its compliance with the FCC's regulations relating to tower lighting, tower painting, posting of the antenna structure registration for a radio or television broadcast station, RF radiation from antennas on the tower, and fencing/enclosure of an AM tower. A Targeted Tower Safety Inspection shall not, for example, include an inspection of any other facilities of the Station, including but not limited to the Station's studio and interior of the transmitter building.

i. The Station Operator acknowledges and agrees that, in the case of a Targeted Tower Safety Inspection or inspection of the public file relating to political broadcasting or EEO materials, the Bureau may, within its discretion, take or recommend enforcement action for any noncompliance discovered as a result of such inspection which relates to tower lighting, tower painting, posting of the antenna structure registration for a radio or television broadcast station, RF radiation from the antenna, and/or fencing/enclosure of an AM tower, and/or violations relating to political broadcasting or EEO materials. All other instances of existing or potential regulatory noncompliance shall be referred to the Station without adverse action for resolution and re-inspection. In such event, the Station shall promptly (i) notify the Association that the Bureau has notified the Station of one or more instances of regulatory noncompliance, (ii) remedy such noncompliance, (iii) notify the ABIP Inspector who performed the immediately preceding ABIP Inspection, (iv) and request a re-inspection by that or some other available ABIP Inspector. The procedures set forth in Section 5(g) hereof applicable to inspections and re-inspections under this ABIP Program shall be followed in such circumstances.

j. The Station Operator acknowledges and agrees that, in the case of a Complaint Driven Inspection of the Station, the Bureau may, within its sole discretion, take enforcement action for any noncompliance discovered as a result of the Complaint Driven Inspection even if not related to the subject of the complaint.

k. The Station Operator acknowledges and agrees that, in the event that the Bureau determines, consistent with the procedures set forth in the FCC ABIP Agreement, that it must issue a forfeiture or take any other adverse action against the Station, the Bureau may, if circumstances warrant and in its discretion, give consideration to the Station's participation in the ABIP Program in mitigation of any violation, forfeiture amount, or other sanction or remedy.

6. Termination of this Agreement. This Agreement shall automatically terminate as of the effective date of the expiration or termination, if any, of the FCC ABIP Agreement. The Station Operator may terminate this Agreement upon ten (10) days notice to the Association; provided, that under no circumstance shall the Association be required to remit to the Station Operator any monies previously remitted to the Association, and provided further, that such termination shall not relieve the Station Operator from the obligation to pay any and all amounts incurred by the Association and/or the ABIP Inspector as a result of any planned or executed ABIP Inspection hereunder. The Association may terminate this Agreement only if the Association has provided the Owner and the Station written notice of a breach of this Agreement and the Owner and the Station have not cured the breach within ten (10) business days of the date of such notice. Notwithstanding any expiration or termination of this Agreement, if the Station shall hold, before the effective date of such expiration or termination, a valid and current Certificate of Compliance, such Certificate shall continue in full force and effect for the remaining term of the Certificate; provided, however, that the Certificate of Compliance shall no longer be valid if the Bureau were to terminate the FCC ABIP Agreement for the principal reason that it holds a genuine concern about the integrity of the ABIP as administered by the Association and the Bureau has given the Association written notice of the specific basis for its concern in its written notice to terminate.

7. Entire Agreement. This Agreement, and the Exhibits attached hereto, embody the entire agreement and understanding of the parties and supersedes any and all prior agreements, arrangements and understandings relating to the matters provided for herein, including, but not

limited to, any prior ABIP agreement(s) between the Association and the Station Operator for the Station, and statements made in prior brochures, flyers, e-mails, and the like. This Agreement may only be amended by a written instrument executed by the parties hereto.

8. Benefit. This Agreement is intended to benefit only the Station Operator and the Station, and any of their successors or assigns. Accordingly, neither this Agreement nor any Certificate of Compliance issued pursuant thereto may be assigned or transferred to any person or entity except to an entity which may now or in the future own or control, directly or indirectly, the FCC license for the Station, and any effort to do so shall be null and void. It is understood that any assignment or transfer of a Certificate of Compliance shall not have the effect of extending such Certificate beyond the original term of the Certificate.

9. Liability and Indemnification. The parties acknowledge and agree that this is a cooperative program, that the Association is motivated to help the broadcast industry increase the level of regulatory compliance generally, and that the Association is not in a position to assume, and does not assume, any liability hereunder to the Station Operator, the Station, or the ABIP Inspector, as a result of this Agreement, the ABIP Program, or the conduct of the Station Operator, the Station or the ABIP Inspector. The Station Operator and the Station shall jointly and severally indemnify and hold harmless, the Association, its members, officers, directors, and staff, from and against any and all demands, claims, actions, suits, proceedings, assessments, judgments, costs, losses, damages, liabilities (contingent or non-contingent) and expenses (including, but not limited to, fines, penalties, court costs and reasonable attorney's fees) asserted against, resulting from, imposed upon or incurred by the Association, or any its members, officers, directors, or staff, directly or indirectly relating to, arising out of, or resulting from this Agreement or any inspection of the Station by the ABIP Inspector or by the FCC (including by the Bureau), and from any non-compliance by the Station Operator and/or the Station with any applicable law, regulation or policy of any governmental authority, including, but not limited to, the FCC. The Station Operator and the Station acknowledge and agree that, except for gross negligence or willful misconduct by the ABIP Inspector, such ABIP Inspector shall not have any liability of any nature to the Station Operator or the Station arising out of this Agreement or out of any ABIP Inspection of the Station. Notwithstanding (i) the expiration of the Term of this Agreement, (ii) any other termination of this Agreement, or (iii) any term or condition herein to the contrary, this Section in its entirety shall survive and remain in full force and effect in perpetuity.

10. Notices. Any communications made pursuant to Section 6 or 9 hereof shall be in writing and shall be deemed given when actually received (including, without limitation, by nationally recognized overnight courier, or upon confirmed receipt of facsimile copy) or on the date of mailing postage prepaid, addressed as specified below the signatures of each party hereto, or addressed to such other address(es) as such party may hereafter specify in a written notice to the other party hereto.

11. No Counterparts Contemplated. This Agreement may not be signed in counterparts.

REMAINING PORTION OF THIS PAGE DELIBERATELY LEFT BLANK.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Contract Date.

The Association signature:

David L. Donovan, President
New York State Broadcasters Association, Inc.
1805 Western Avenue, Albany, NY 12203
E-mail Address: ddonovan@nysbroadcasters.org
Telephone Number: (518) 456-8888
Fax Number (518) 456-8943

The Station Operator (General Manager) signature:

Name of Station Operator: _____

Name & Title of Duly Authorized Representative: _____

Mailing Address: _____

E-mail Address: _____

Telephone Number: _____

Fax Number: _____

THE STATION OPERATOR ACKNOWLEDGES AND AGREES THAT, BY ENTERING INTO THIS AGREEMENT, UNLESS THE STATION OPERATOR HAS CHECKED “NO” BELOW AND SET FORTH THE INITIALS OF THE PERSON EXECUTING THIS AGREEMENT ON BEHALF OF THE STATION OPERATOR, THE STATION OPERATOR HEREBY EXERCISES ITS OPTION PURSUANT TO SECTION 5(d) OF THIS AGREEMENT AND EXPRESSLY DIRECTS THE ASSOCIATION TO PROVIDE THE FCC WITH NOTICE THAT THE STATION OPERATOR HAS ENTERED INTO THIS AGREEMENT FOR THE STATION, THE DATE OF THIS AGREEMENT, AND THE ESTIMATED DATE OF INSPECTION AS NOTED ABOVE:

- | | | INITIALS |
|--------------------------|---|----------|
| <input type="checkbox"/> | Yes. <i>The NYSBA will now notify the FCC that your station is scheduled for an ABIP inspection. (Does not include inspection of on-line public and political files)</i> | _____ |
| <input type="checkbox"/> | No. <i>The NYSBA will not notify the FCC that your station is scheduled for an ABIP inspection. However, your station is subject to potential routine, drop-in FCC inspections during the 150 day inspection window.</i> | _____ |

EXHIBIT A

STATIONS WHICH ARE SUBJECT TO THIS AGREEMENT

<u>CALL LETTERS</u>	<u>SERVICE</u>	<u>COMMUNITY OF LICENSE/STATE</u>	<u>FCC FACILITY IDENTIFICATION NUMBER</u>
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