

**DONATION AGREEMENT**

**THIS DONATION AGREEMENT** (this "Agreement") is made on this 15 day of April, 2013, by and between KPTV-KPDX Broadcasting Corporation (Donor"), and the Blue Mountain Translator District (the "Donee"). The Donor and Donee are sometimes individually referred to in this Agreement as a "Party" and collectively as the "Parties."

**WITNESSETH**

**WHEREAS**, Donor is the authorized Federal Communications Commission ("FCC") licensee of K23DB (Facility Id. 35462), licensed to LaGrand, Oregon (the "Station"); and

**WHEREAS**, Donor desires to make a contribution to Donee of all right, title, and interest in and to certain assets of the Station, subject to the terms and conditions stated herein; and

**WHEREAS**, Donee desires to receive and own such assets of the Station under the terms and conditions stated herein; and

**WHEREAS**, the consummation of this Agreement is subject to the prior approval of the FCC.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions herein contained, the Parties, intending to be legally bound, hereby agree as follows:

1. **ASSETS**. Subject to the prior approval of the FCC, Donor agrees to donate, transfer, assign, convey, and deliver to Donee, and Donee agrees to receive and accept, free and clear of all liabilities, debts, liens, charges, assessments and encumbrances of any kind (except as specifically contemplated herein), any and all of the following (collectively referred to hereinafter as the "Donated Assets"):

- (a) the licenses, permits and authorizations issued by the FCC to Donor with respect to the Station (the "FCC Licenses"), as listed in Schedule 1(a);
- (b) the Donor's rights and interests under those certain leases for the operation of the Station transmission facilities (the "Ground Leases"), as listed in Schedule 1(b);
- (c) the broadcast transmission equipment used in the operation of the Station (the "Equipment"), as listed in Schedule 1(c); and
- (d) FCC files and records pertaining to the Station (the "FCC Records").

The Donated Assets do not include any other assets, rights or interests of Donor, whether or not related to the Station.

2. Reserved.

3. **DONOR'S COVENANTS AND WARRANTIES.** Donor hereby represents, warrants and covenants to Donee as follows:

- (a) the FCC Licenses are in effect;
- (b) Donor has marketable title to the Donated Assets owned by Donor;
- (c) Donor will convey the Donated Assets to Donee in "as is" condition on the Closing Date without representations or warranties of any kind, express or implied, whether relating to the conformance of the Donated Assets to requirements of FCC Licenses, applicable rules and regulations of the FCC or otherwise;
- (d) the Ground Leases are in effect;
- (e) Donor will deliver the Donated Assets at Closing free and clear of debts, liens, or claims;
- (f) Donor has full corporate power and authority to enter into and perform this Agreement, and this Agreement constitutes a valid and binding Agreement of Donor enforceable in accordance with its terms, except to the extent the enforceability of this Agreement may be affected by bankruptcy, insolvency, or similar laws affecting creditors' rights generally and by judicial discretion in the enforcement of equitable remedies; and
- (g) as of the Closing Date, Donor will have paid all tangible and intangible taxes and assessments, rent, water, sewer, and other utility charges or assessments relating to the Donated Assets, if any.

4. **DONEE'S COVENANTS AND WARRANTIES.** Donee hereby represents, warrants and covenants to Donor as follows:

- (a) Donee is a bona fide governmental entity duly formed and validly existing and in good standing under the laws of the State of Oregon;
- (b) Donee has full power and authority to enter into and perform this Agreement, and this Agreement constitutes a valid and binding Agreement of Donee enforceable in accordance with its terms, except to the extent the enforceability of this Agreement may be affected by bankruptcy, insolvency, or similar laws affecting creditors' rights generally and by judicial discretion in the enforcement of equitable remedies;

- (c) Upon the Closing, Donee agrees to undertake, assume and perform all obligations and liabilities of Donor under the FCC Licenses and Ground Leases to the extent such obligations and liabilities relate to the period from and after the Closing;
- (d) Donee is legally and financially qualified to hold the FCC Licenses and Donee knows of no reason why it would not be approved to be the FCC licensee of the Station;
- (e) Donee acknowledges and agrees that, except as expressly provided herein, the Donated Assets shall be conveyed to Donee without any representation, warranty or covenant of any type or nature; and
- (f) Except as otherwise provided in this Agreement, the Donee shall bear all expenses in connection with the consummation of this transaction, e.g. attorney's fees, filing fees typically paid for by an assignor or assignee of an FCC license, recordation taxes or closing costs typically paid by a grantor or grantee of real property.

5. **FCC ASSIGNMENT APPLICATION.** The Parties shall file an application with the FCC seeking consent to the assignment of the FCC Licenses to Donee within five (5) business days after executing this Agreement and to cooperate fully and diligently in seeking the FCC's consent to assignment of the FCC Licenses from Donor to Donee (the "Assignment Application"). Donee shall pay any FCC fees required for filing the Assignment Application.

6. **FCC ACTION.** If the FCC has refused or failed to grant the Assignment Application on or before April 1, 2014, either Party, so long as such party is in compliance with its obligations hereunder, may terminate this Agreement by giving the other Party written notice of such intent. Upon the exercise of a Party's right to terminate this Agreement in accordance with this Section 6, neither Party shall have any further rights, duties, obligations, or liabilities under this Agreement to the other Party.

7. **CLOSING.** Closing of the transfer of the Donated Assets (the "Closing") shall take place within ten (10) business days after the effective date of the grant of Assignment Application (the "Closing Date"). The Closing shall be held by the execution and delivery of the documents contemplated hereby by mail, facsimile or electronic transmission in PDF format.

8. **TERMINATION.** In addition to termination rights under Section 6 above, in the event that prior to Closing, the Donated Assets are damaged or destroyed such that one or more of the Station is rendered inoperable for a period of thirty (30) days or more, or if condemnation proceedings are commenced against the Donated Assets, such that one or more of the Station is rendered inoperable for a period of thirty (30) days or more, either Party shall have the right to terminate this Agreement, exercisable by giving written notice of such decision to the other Party within ten (10) days after receiving written notice of such damage, destruction, or condemnation proceedings. Upon a Party's exercise of its right to terminate this Agreement in accordance with

the provisions of Section 6 or this Section 8, neither Party shall have any further rights, duties, obligations, or liabilities under this Agreement to the other Party.

9. **STATION CONTROL.** Prior to Closing, Donor shall have complete control over the Donated Assets and operation of the Station. Prior to the Closing, after first obtaining the Donor's consent, Donee shall have the right to review Donor's records relating to the Donated Assets and to inspect the Donated Assets, provided, however, that Donee shall not interfere with or disrupt the operation of the Station during such review and inspection. Upon Closing, as contemplated herein, the Donee shall have complete control over the Donated Assets and operation of the Station.

10. **INDEMNIFICATION.**

- (a) Donor hereby agrees to indemnify, defend, save, and hold Donee harmless with respect to any and all claims, losses, obligations, liabilities, costs and expenses, including reasonable counsel fees, threatened, suffered, incurred, or sustained by Donee by reason of any misrepresentations by Donor or any breach by Donor of this Agreement or of any of Donor's representations, warranties or covenants contained in this Agreement, or arising from or by reason of Donor's ownership of the Donated Assets or operation of the Station prior to the Closing Date hereunder. This Section 10(a) shall survive Closing for one (1) year.
- (b) Donee hereby agrees to indemnify, defend, save, and hold Donor harmless with respect to any and all claims, losses, obligations, liabilities, costs and expenses, including reasonable counsel fees, threatened, suffered, incurred, or sustained by Donor by reason of any misrepresentations by Donee or any breach by Donee of this Agreement or of any of Donee's representations, warranties or covenants contained in this Agreement, or arising from or by reason of Donee's ownership of the Donated Assets or operation of the Station from and after the Closing Date hereunder. This Section 10(b) shall survive Closing for one (1) year.

11. **CLOSING DOCUMENTS AND OBLIGATIONS.**

- (a) Donor will at Closing execute and deliver to Donee customary assignments, instruments, and other documents sufficient to grant to Donee title to the Donated Assets, free and clear of debts, liens and claims.
- (b) The Donee will, at Closing, execute an assignment and acceptance of the Ground Leases. The Parties shall use good faith efforts to secure the consent of the Lessors under such Ground Leases to the extent such consent is required for the assignment of the Ground Leases to Donee.
- (c) Effective on the Closing Date, risk of loss for the Donated Assets shall transfer to the Donee and all financial obligations associated with the

Donated Assets shall be the responsibility of the Donee, e.g., real estate taxes, utilities, Ground Lease rents, music license agreement fees, insurance, maintenance, repair, and replacement costs.

- (d) The operation of the Station and normal operating expenses attributable thereto as of 11:59 p.m. on the day prior to the Closing Date (the "Effective Time") shall be for the account of Donor and thereafter for the account of Donee and, if any expense related to the Donated Assets is allocable or credited to Donor or Donee, it shall be allocated, charged or prorated accordingly. Expenses for goods or services received both before and after the Effective Time, power and utilities charges, and rents and similar prepaid and deferred items shall be prorated between Donor and Donee as of the Effective Time. At Closing, the parties shall make all known prorations and estimate any remaining prorations.

12. **NOTICES.** All notices required or permitted to be given under the provisions of this Agreement shall be in writing, delivered by personal delivery, or sent by commercial delivery service or certified mail, return-receipt requested. Notices shall be deemed to have been given on the date of personal delivery, or the date set forth in the records of the delivery service or on the return-receipt. Notices shall be addressed as follows:

If to Donor:

KPTV-KPDX Broadcasting Corporation  
1716 Locust Street  
Des Moines, IA 50309  
Attn: Perry Bradshaw, Esq.

If to Donee:

Blue Mountain Translator District  
Wallowa-Whitman National Forest  
3285 11<sup>th</sup> Street  
Baker, OR 97814  
Attn: Dennis R. Spence

13. **STRICT COMPLIANCE.** No failure of a Party to exercise any right or to insist upon strict compliance by the other Party with any obligations and no custom or practice of the Parties at variance with this Agreement shall constitute a waiver of the right of a Party to demand strict and exact compliance. Waiver by one Party of any particular default by the other Party shall not affect or impair a Party's rights in respect to a subsequent default of the same or of a different nature, nor shall any delay or omission of a Party to exercise any rights arising from such default affect or impair the rights of that Party as to such default or any subsequent default.

14. **ASSIGNMENT.** Neither Party shall assign any right under this Agreement nor delegate any duty under this Agreement unless the other Party has consented to any such assignment or delegation in writing. This document shall be binding on the heirs, successors, and assigns of the Parties hereto.

15. **SEVERABILITY AND INDEPENDENT COVENANTS.** If any covenant or other provision of this Agreement is invalid, illegal, or incapable of being enforced by reason of any law, administrative order, judicial decision, or public policy, all other conditions and provisions shall remain in full force and effect. No covenant shall be deemed dependent upon any other covenant or provision unless so expressed in this Agreement.

16. **FURTHER ASSURANCES.** The Parties shall take any actions and execute any other documents that may be necessary or desirable to the implementation and consummation of this Agreement. Nothing contained in this Agreement shall be deemed or construed, either by the parties hereto or by any third person, to create the relationship of principal and agent, or partnership, of joint venture, of trustee and beneficiary, or of any association between the Donor and Donee. Time shall be of the essence in the performance of obligations in this Agreement.

17. **GOVERNING LAW.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Iowa, without regard, however, to the choice of law provisions thereof which may direct the application of the laws of another jurisdiction. The Parties agree that the exclusive forum and the site for the resolution of any dispute arising out of, under or related to the transactions contemplated by this Agreement shall be exclusively before the federal and state courts located in the State of Iowa.

18. **ENTIRE AGREEMENT.** This Agreement, the Schedules hereto, and all documents, certificates, and other documents to be delivered by the Parties pursuant hereto collectively represent the entire understanding and agreement between Donor and Donee with respect to the subject matter of this Agreement. This Agreement supersedes all prior negotiations among the Parties and cannot be amended, supplemented, or changed except by an agreement in writing that makes specific reference to this Agreement and that is signed by the Party against which enforcement of any such amendment, supplement, or modification is sought.

19. **WAIVER OF COMPLIANCE; CONSENTS.** Except as otherwise provided in this Agreement, any failure of any of the Parties to comply with any obligation, representation, warranty, covenant, agreement, or condition herein may be waived by the Party entitled to the benefits thereof only by a written instrument signed by the Party granting such waiver, but such waiver of failure to insist upon strict compliance with such obligation, representation, warranty, covenant, agreement, or condition shall not operate as a waiver of or estoppel with respect to any subsequent or other failure. Whenever this Agreement requires or permits consent by or on behalf of any Party hereto, such consent shall be given in writing in a manner consistent with the requirements for a waiver of compliance set forth in this Section 19.

20. **ATTORNEYS FEES.** In the event of a default by either Party which results in a judgment, award of damages or adverse ruling in a lawsuit or other legal proceeding for any remedy available under this Agreement, the non-defaulting or non-breaching Party which is the beneficiary of the judgment, award or ruling shall be entitled to reimbursement from the breaching party of its reasonable legal fees and expenses.


21. **COUNTERPARTS.** This Agreement may be signed in counterparts (including by facsimile transmission or electronic transmission in PDF format) with the same effect as if the signature on each counterpart were upon the same instrument.

*[The remainder of this page intentionally left blank.]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

**DONOR:**

**KPTV-KPDX BROADCASTING CORPORATION**

By:   
Name: \_\_\_\_\_  
Title: Patrick McCreary  
VP, GM

**DONEE:**

**Blue Mountain Translator District**

By:   
Name: Dennis R. Spence  
Title: Board Chairman

4/23/2013