

## **CONSULTING AND NONCOMPETITION AGREEMENT**

**THIS CONSULTING AGREEMENT**, dated this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between Tucson Radio, LLC, an Arizona limited liability company (TRL), on the one hand, and Bustos Media Holdings, LLC, a California limited liability company (BMH), on the other hand;

**WHEREAS**, TRL and its President, Fletcher J. McCusker, are experienced owners and operators of radio stations in the Tucson, Arizona radio market, and, in particular, has achieved top-five Nielsen ratings position with AM Broadcast Stations KDRI, 830 kHz ("KDRI") and FM Translator Station K269FV, 101.7 MHz, Tucson, Arizona (the Stations); and

**WHEREAS**, BMH and TRL are parties to an Asset Purchase Agreement dated March \_\_\_, 2023 pursuant to BMH will acquire certain assets used to operate the Stations from TRL;

**WHEREAS**, BMH desires to use TRL's expertise in the Tucson radio market;

**NOW, THEREFORE**, the parties hereto agree as follows:

1. TRL, through its President, Fletcher J. McCusker, or any other person designated by TRL in the event of Mr. McCusker's unavailability, shall serve as a consultant to the Stations. This consultancy shall commence on the date first written above and shall end on the fifth anniversary thereafter, \_\_\_\_\_, 2028 ("the Term").

2. TRL shall consult with BMH as to relationships with the owner and landlord of KDRI's broadcast tower in Cortaro, Arizona as well as its studio locations at 64 East Broadway in Tucson, Arizona as well as KDRI's music format and any other promotional, sales and operational issues that may arise. TRL shall provide services only when called upon by BMH to provide such services. When called upon to provide such services, TRL shall employ commercially reasonable efforts to provide services which are useful to BMH. TRL shall serve as an independent contractor of BMH, and any employee or owner providing services to BMH on behalf of TRL shall not be deemed an employee of BMH. Likewise, none of TRL's officers or directors shall serve as an officer, director or manager of BMH. TRL's maximum amount of time to be provided to BMH shall not exceed four (4) hours per month.

3. During the Term, neither TRL nor Mr. McCusker shall own, operate or control any radio broadcast station licensed to any community located in whole or in part within the geographic area which is the smaller of (i) fifty (50) miles of the Tucson, Arizona reference coordinates published in the National Atlas of the United States or (ii) within the 2.0 mV/m contour of KDRI

4. In consideration for the performance of TRL pursuant to the foregoing paragraphs, BMH agrees to pay TRL compensation in accordance with the Schedule I attached hereto.

5. TRL and BMH represent and warrant that to the extent there are business chance brokers or agents involved in this transaction who are or might be entitled to a commission, agency or finder's fee or other payment by virtue of their entering into this Consulting and Noncompetition Agreement (other than fees and costs charged by attorneys, accountants and consulting engineers), such commission and/or fee shall be paid by BMH. Should TRL incur any fees in connection with performing its consultancy services to BMH for which it will expect reimbursement from BMH, those fees must be approved in advance by BMH.

6. TRL shall not attempt to exercise any control or influence whatsoever over the operations of KDRI or its co-owned FM translator K269FV, Oro Valley, Arizona, subsequent to the date upon which the KDRI license has been assigned to BMH.

7. The foregoing constitutes the entire and whole agreement of the parties with respect to the subject matter hereof, and may not be modified, amended, or changed in any way unless in writing signed by all parties hereto. This agreement shall be governed by the laws of the State of Arizona. Fletcher J. McCusker and Amador S. Bustos represent and warrant that they are authorized signatories on behalf of their respective companies, and to bind them in accordance with the terms of this Agreement.

8. **Notices**. All notices provided or permitted to be given under this Agreement must be in writing and must be served by direct delivery; by depositing the same with a recognized overnight carrier (i.e. UPS, Federal Express, USPS, etc.); by electronic facsimile (fax) transmission; by electronic internet (email) transmission; or, by deposit in the United States mail, postage prepaid, or, by certified mail, return receipt requested. Any notice shall be effective when evidence of receipt is obtained by the sender. Such notice shall be addressed to the party to be notified, and to each respective attorney, at the address shown

below, or such other address as is designated by notice to the other parties.

If to TRL or McCusker:

Fletcher J. McCusker, President  
Tucson Radio, LLC  
3233 E Via Palos Verdes  
Tucson, AZ 85716  
Tel: (520) 815-5374  
Email: [fjmccusker@gmail.com](mailto:fjmccusker@gmail.com)

with a copy (which shall not constitute notice) to:

David A. O'Connor, Esquire  
Wilkinson Barker Knauer, LLP  
1800 M Street, NW, Suite 800N  
Washington, DC 20036  
Tel: (202) 383-3429  
[doconnor@wbklaw.com](mailto:doconnor@wbklaw.com)

If to BMH:

Mr. Amador S. Bustos, President/Manager  
Bustos Media Holdings, LLC  
5110 SE Stark Street  
Portland, OR 97215  
Tel: (503) 234-5550  
Email: [abustos@bustosmedia.com](mailto:abustos@bustosmedia.com)

with a copy (which shall not constitute notice) to:

Dennis J. Kelly, Esquire  
Law Office of Dennis J. Kelly  
Post Office Box 41177  
Washington, DC 20018  
Tel: (202) 293-2300  
Email: [dkellyfcclaw1@comcast.net](mailto:dkellyfcclaw1@comcast.net)

9. This Agreement may be signed manually or digitally (including using DocuSign or a similar program) and in one or more counterparts, each of which shall be considered an original counterpart, and shall become a binding Agreement when the parties shall have each executed one counterpart. Such signature pages may be transmitted by facsimile (fax) transmission and/or by

electronic internet transmission (email) and any signature thereon shall be legally considered to be an original signature.

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SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT  
AS OF THE DAY AND YEAR FIRST WRITTEN ABOVE.

TUCSON RADIO, LLC

By \_\_\_\_\_  
Fletcher J. McCusker  
President

BUSTOS MEDIA HOLDINGS, LLC

By \_\_\_\_\_  
Amador S. Bustos  
President and Manager

**COMPENSATION SCHEDULE**

Consulting serves by TRL or Fletcher J. McCusker shall only be performed by specific request of BMH, and will be compensable at the rate of TWO HUNDRED FIFTY DOLLARS (\$250.00) per hour plus any out-of-pocket expenses agreed upon prior to the provision of the requested services.

In addition, if BMH sells its entire cluster of stations in the Tucson, Arizona radio metro market (either via an asset sale or an equity sale) so that the closing on said transaction takes place within five years of the date hereof, that is, prior to \_\_\_\_\_, 2028 for a net amount of at least FOUR MILLION ONE HUNDRED THOUSAND DOLLARS (\$4,100,000), TRL will be compensated by use of the following formula: first, multiply the NET purchase price received by BMH at closing on such sale by SEVEN PERCENT (7.00%), which will result in a figure referred to herein as the "Product"; and second, subtract THREE HUNDRED THOUSAND DOLLARS (\$300,000) from the Product, which will result in the compensation to be paid by BMH to TRL.

For example, if BMH receives \$5,000,000.00 for its Tucson cluster TRL will receive FIFTY THOUSAND DOLLARS (\$50,000.00) in compensation (\$5,000,000.00 multiplied by 0.07 equals the Product of \$350,000.00; \$300,000.00 subtracted from \$350,000.00 equals \$50,000.00).

Time is of the essence under this schedule.