

STATION DONATION AGREEMENT AND MOU

THIS STATION DONATION AGREEMENT (the "Agreement") is entered into by and between the New Mexico Highlands University ("Donor") and the Albuquerque Public Schools ("Recipient").

Background

WHEREAS, Donor is the licensee of FM radio station KEDP(FM), Las Vegas, New Mexico (Facility ID No. 4281) (the "Station"); and

WHEREAS, subject to consent of the Federal Communications Commission ("FCC"), Donor wishes to assign to Recipient the Station, and Recipient wishes to receive the same from Donor.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises, representations and covenants contained herein, the parties, intending to be bound legally, subject to the terms and conditions set forth herein agree as follows:

1. **Assignment and Sale of FM License.** Subject to the terms and conditions set forth in this Agreement, Donor agrees to convey, transfer and assign to Recipient at the Closing (as defined in Section 3) all of Donor's right, title and interest in and to the Station as well as the station public file, any other official records of the Station required by the FCC, and such technical equipment as specified in this Agreement.
2. **FCC Consent.** Within five (5) business days of the execution of this Agreement, the parties shall file an application (the "Assignment Application") for FCC consent to the assignment of the Station license to Recipient (the "FCC Consent"). Recipient shall be responsible for the payment of all legal fees, and application fees necessary to obtain FCC Consent.
3. **Closing.** Within five (5) business days after the FCC Consent has become a Final Order, or at such earlier time as the parties may agree, the parties shall consummate the transaction contemplated by this Agreement at a closing (the "Closing"). A Final Order is one no longer subject, in the normal course, to administrative or judicial review, reconsideration or appeal. At the Closing, Donor shall deliver to Recipient an Assignment of License and any other documents of conveyance reasonably requested by Recipient as necessary to consummate the transaction contemplated by this Agreement.
4. **Pre-Closing Covenants.** Should Recipient wish to seek to modify the Station FCC license prior to Closing, Donor will cooperate in the filing of such applications and provide written permission to Recipient for filing with the FCC, as necessary; however, Recipient shall be responsible for the payment of all legal fees, and engineering costs, associated with such application. The parties will cooperate fully with each other in fulfilling their respective

obligations under this Agreement, including using their respective reasonable best efforts to obtain the required FCC Consent.

5. **Conditions Precedent to Closing.** The parties acknowledge and agree that the FCC Consent to the assignment of the Station from Donor to Recipient is a condition precedent to the Closing.

6. **Representations and Warranties.** Except as otherwise stated in this paragraph, each party hereto expressly represents and warrants that it has the full power and authority to enter into and execute this Agreement. Subject only to the FCC Consent, there is no constraint upon either party's legal ability to submit the Assignment Application for FCC Consent. Donor makes no other representations or warranties regarding the condition of any of the Station assets or of any other matter not specifically set forth herein. All physical assets being donated and conveyed hereunder shall be provided to Recipient as is, where is, subject to approval by the New Mexico Highlands University Board of Regents and other agencies' approval as provided in the Sale of Public Property Act, NMSA 1978, §§ 13-6-1 to -8. Following the Closing, Donor shall have no liability for any claim that arises with respect to the Station or to any other asset being donated to the Recipient.

7. **Termination.** This Agreement may be terminated for any reason upon six months' notice given by one party to the other.

8. **Miscellaneous.**

a. **Notices.** All notices, demands, requests or other communications required or permitted hereunder shall be in writing and sent by overnight air courier service (charges prepaid) or personal delivery, and by email, to the appropriate party at the address specified below (or to such other address which a party shall specify to the other party in writing):

If to Donor:

NMHU President's Office
Box 9000
Las Vegas, NM 87701
Email: presidentsoffice@nmhu.edu

And

NMHU Vice President of Finance, Administration, and Government
Relations
Box 9000
Las Vegas, NM 87701
Email: vpfa@nmhu.edu

If to Recipient:

Albuquerque Public Schools
Mr. Michael Brasher
General Manager
KANW-FM
2020 Coal S.E.
Albuquerque, NM 87106

Email: brasher@aps.edu

And

Superintendent
Albuquerque Public Schools
P.O. Box 25704
Albuquerque, New Mexico 87125

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

Ernest T. Sanchez, Esq.
The Sanchez Law Firm PC
1629 K Street NW
Suite 300
Washington, DC 20006

Each party may change its address for notice purposes by providing written notice in accordance with this section.

b. Assignment and Binding Effect. Recipient may not assign its rights under this Agreement without the consent of Donor.

c. Governing Law. Except to the extent governed by federal law, this Agreement shall be governed, construed and enforced in accordance with the laws of the State of New Mexico, without regard to the choice of law provisions thereof.

d. Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

e. Entire Agreement. This Agreement represents the entire understanding and agreement between the parties with respect to the subject matter hereof. This Agreement supersedes all prior negotiation, memoranda and agreement between the parties with respect to the subject matter hereof, and may not be altered, changed, modified or amended except by a written instrument signed by each of the parties hereto.

f. No Waiver. No provision or condition of this Agreement shall be waived by either party hereto except by a written instrument delivered to the other party and signed by the party consenting to and to be charged with such waiver.

g. Other and Further Documents. The parties hereto agree to execute, acknowledge and deliver, before, at or after the Closing, such other and further instruments and documents as may be reasonably necessary to implement, consummate and effectuate the terms of this Agreement.

h. Good Faith. All parties hereto shall act with reasonable diligence, and in good faith, in performing and discharging their respective duties and obligations hereunder.

i. Headings and Cross References. Heading of the sections have been included for convenience of reference only and shall in no way limit or affect the meaning or interpretation of the specific provisions of this Agreement. All cross-references to sections herein shall mean the section of this Agreement unless otherwise stated or clearly required by the context.

j. Expenses. Except as otherwise provided herein, each party shall be solely responsible for all fees and expenses each party incurs in connection with the transaction contemplated by this Agreement, including, without limitation, legal fees incurred in connection herewith.

9. Additional terms.

a. NMHU will continue to house the station transmission system to include the transmitter, antenna and tower ("station transmission system") in its current location. If the station transmission system equipment or other equipment is relocated at any time during the term of this Agreement, APS will pay all costs for moving any of the station transmission system equipment or other equipment and will ensure that it does not cause disruption to NMHU operations. NMHU may request APS to move any station transmission system equipment or other equipment, and APS will move such equipment within a reasonable time upon the mutual agreement of APS and NMHU, with consideration to any FCC objections.

b. Subject to NMHU Board approval and in accordance with NMSA 1978, §§ 13-6-1 to -8, NMHU will donate the below used technical equipment to APS in as is, where is, condition. Should the FCC fail to consent to the assignment of the Station from Donor to Recipient, APS will promptly return the technical equipment to NMHU.

Item Tag#	Description	Estimated Value
39974	David III FM Stereo Processor	\$1,894.12
38292	BELAR FM Modulation Monitor	\$1,814.49
38296	BELAR FM Modulation Monitor	\$1,922.00
38668	Crown B FM30E RM Exciter	\$2,807.29
38127	Audioarts D-16 Console	\$7,489.00
38578	Eventide #BD960 Broadcast Delay	\$1,612.68
	Collins Transmitter – Donated in 2005	
	Antenna Purchased in 1967	

	Tower	
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c. NMHU will provide the necessary Ethernet connection for the transmission equipment. NMHU will pay for the electricity and internet costs incurred by the transmission system.

d. APS will pay for any maintenance costs and or purchase of new transmission system equipment. APS will insure proper insurance coverage, and will assume liabilities associated with: equipment (including donated equipment upon completion of donation), all other station transmission equipment, and other equipment necessary to operate Station upon Closing.

e. KANW, on behalf of APS, will provide 350 public service announcements for NMHU per calendar year to NMHU in 30 second increments, valued at \$40 per segment, which will be simultaneously broadcast on all KANW frequencies. The public service announcements will be distributed over the course of a calendar year. The date, time and frequency of each segment will be determined by both parties. In addition to the 350 public service announcements for NMHU, KANW, on behalf of APS, will also provide opportunities to NMHU to make public service announcements benefitting the community. The date, time, and frequency of such announcements will be determined by both parties. In the event either party terminates this Agreement in accordance with Paragraph 7, KANW guarantees it will provide a minimum of five years of public service announcements for NMHU and public service announcement opportunities benefitting the community to NMHU from the date of entering this Agreement. APS/KANW will not have any obligation under this provision of the Agreement if APS ceases to operate KANW.

f. APS/KANW will provide twice yearly noncredit courses, for NMHU/Las Vegas High School students, to receive hands on broadcast training. KANW personnel will teach the course at the KANW broadcast facility in Albuquerque. The course takes place in the evenings, for 8 weeks, from 6 PM to 9 PM. KANW is willing to adjust the class schedule upon mutual agreement by both parties. Space in the class is limited to 20 participants, but KANW will reserve up to 10 slots per class, to accommodate NMHU/Las Vegas High School students. NMHU/Las Vegas High School schools and/or students will be responsible for the cost to transport the student participants from Las Vegas to Albuquerque for these courses. APS/KANW normally charges \$400 for each out of district course participant.

g. NMHU will be encouraged to provide news releases to KANW for news coverage inclusion.

h. KANW/KEDP services will seek to provide increased awareness of NMHU via PSA's, news releases and other announcements.

i. This agreement goes into effect the day both parties sign the agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year written below.

DONOR:

New Mexico Highlands University

By: 

Name, Title: Dr. Sam Minner, President NMHU

Date: 1/25/21

RECIPIENT:

Albuquerque Public Schools

By: 

Name, Title: Scott Elder, Interim Superintendent

Date: 01/26/21

SCHEDULE 1

FCC FM RADIO STATION LICENSE

<u>LICENSE</u>	<u>FILE NUMBER</u>	<u>EXPIRATION DATE</u>
KEDP-(FM), Las Vegas, New Mexico	BRED-20130528ACA	October 1, 2021