

## **ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT (this “**Agreement**”) is made as of this 3rd day of November, 2016, by and between OPEN SKY RADIO CORP., a nonprofit corporation organized in the State of California (“**Seller**”), and NEVADA PUBLIC RADIO, a nonprofit corporation organized in the State of Nevada (“**Buyer**”).

### **W I T N E S S E T H:**

WHEREAS, Seller is the Federal Communications Commission (“**FCC**”) licensee of noncommercial educational radio Station KJIV(FM), Channel 206, 89.1 MHz, Facility ID Number 172600, Sun Valley, Nevada (“the “**Station**”); and

WHEREAS, Seller desires to sell the FCC Authorizations and related assets of the Station to Buyer, and Buyer desires to purchase the FCC Authorizations and related assets of the Station from Seller upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, Buyer and Seller, intending to be legally bound, hereby agree as follows:

1. Assets Transferred. Subject to the approval of the FCC and to the terms and conditions of this Agreement, Seller agrees to sell and Buyer agrees to purchase the following assets (collectively the “**Assets**”), all free and clear of liens, mortgages and encumbrances of any nature whatsoever:

(a) FCC Authorizations. The authorizations issued by the FCC to Seller in connection with the business or operations of the Station, as listed in Schedule 1(a) hereto, together with any additional authorizations or licenses issued by the FCC with respect to the operation of the Station between the date hereof and the Closing Date (the “**FCC Authorizations**”);

(b) Tangible Assets. The personal property used or useful in the operation of the Station listed in Schedule 1(b) hereto, together with any replacements thereof made between the date of this Agreement and the Closing Date (the “**Tangible Assets**”), in “as is” condition;

(c) Communication Facilities Lease Agreement. The tower lease for the transmitter site at the Communications Building and Tower, located on Virginia Peak, in the County of Washoe, State of Nevada (including, but not limited to, space on the antenna tower, space in the transmitter building and related easements), used for the operation of Station KJIV, as set forth in Schedule 1(c) hereto (“**Communication Facilities Lease Agreement**”); and

(d) Assumed Contracts. All contracts, leases and other agreements, written or oral, to which Seller is a party or which are binding upon Seller and which relate to or affect the Assets or the business or operations of the Station, and that Buyer agrees in writing to assume upon its purchase of the Station, as listed in Schedule 1(d) hereto, and other contracts entered into by Seller between the date of this Agreement and the Closing Date that Buyer agrees in writing to assume; and

(e) Records. All records required by the FCC to be created and retained by the Station, including the contents of the Station's public inspection files, software, warranties, engineering studies, and business records that relate to or affect the Assets or the operation of the Station and that are within Seller's possession and control.

2. Excluded Assets. Without limiting the foregoing, the Assets shall not include the following excluded assets ("**Excluded Assets**"):

(a) Any assets located at the current studio facilities except those specifically listed in Schedule 1(b); and

(b) Any employment contracts or obligations regarding any personnel working at or for the Station prior to the Closing Date; and

(c) Contracts of insurance or insurance proceeds and insurance claims made by Seller relating to property or equipment repaired, replaced or restored by Seller prior to the Closing Date; and

(d) The call sign KJIV, the Station's website and website address and any social media accounts related to the Station; and

(e) The Station's membership lists and underwriting database; and

(f) All Seller's assets and other property or leasehold interests not referenced in *Section 1(a) to (f)* above.

Seller shall convey and transfer to Buyer good and marketable title to the Assets free and clear of liens or encumbrances, except for liens for taxes not yet due and payable and liens that will be released at or prior to Closing (collectively, "**Permitted Liens**").

3. Consideration. The consideration for this Agreement shall consist of a purchase price ("Purchase Price") for the Assets in the amount of Five Hundred Fifty Thousand Dollars (\$550,000) paid by Buyer to Seller as follows:

(a) Good Faith Deposit. Simultaneously with the execution of this Agreement, Buyer shall pay a good faith escrow deposit in the amount of Twenty Seven Thousand Five Hundred Dollars (\$27,500) (the "*Good Faith Deposit*") in immediately available funds to an Escrow Agent mutually acceptable to Buyer and to Seller pursuant to an Escrow Agreement in the form attached as Schedule 3. The Good Faith Deposit shall be used to secure Buyer's performance under this Agreement and the entire Good Faith Deposit shall be applied as a credit towards Buyer's payment of the Purchase Price at Closing. All interest earned on the Good Faith Deposit shall accrue to the party receiving the disposition of the Good Faith Deposit pursuant to this Agreement.

(b) At Closing. Five Hundred Twenty Two Thousand Five Hundred Dollars (\$522,500) at Closing by wire transfer in immediately available funds.

4. Liabilities Assumed and Excluded.

(a) Assumed Liabilities. Upon the Closing, Buyer shall assume, pay, and perform the liabilities and obligations of Seller arising on and after the Closing Date under the Communication Facilities Lease Agreement, Assumed Contracts and the FCC Authorizations (the “**Assumed Liabilities**”).

(b) Excluded Liabilities. Except for the Assumed Liabilities, Buyer does not assume nor shall Buyer be obligated for any other liabilities, obligations or responsibilities whatsoever of Seller or arising from or related to Seller’s operation of the Station through the Closing Date (the “**Excluded Liabilities**”). Without limiting the generality of the foregoing, Seller shall retain and perform all obligations and liabilities related to any employees providing services to the Station, incurred on or prior to the Closing Date, including, without limitation, any obligations that may arise as the result of the consummation of the transactions contemplated by this Agreement.

5. Pre-Closing Covenants.

(a) Seller’s Pre-Closing Covenants.

(i) From the date of this Agreement to the Closing Date, Seller will continue to operate the Station in the ordinary course of business and will not take any action that could reasonably be expected to have a material adverse effect on the Assets or the Station or Buyer’s rights and interests under this Agreement.

(ii) From the date of this Agreement to the Closing Date, Seller will (A) maintain, preserve and keep the Assets and technical facilities of the Station in good repair, working order and condition, reasonable wear and tear excepted; (B) maintain appropriate insurance on the Assets, (C) pay all liabilities and obligations pertaining to the Station, the Assets and technical facilities of the Station that become due and payable in the ordinary course of business, including all taxes, assessments and government charges upon or against the Assets or the technical facilities or operations of the Station; and (D) comply in all material respects with all statutes, rules and regulations applicable to the Assets or the operation of the Station.

(iii) Seller will not, without the prior written consent of Buyer: (A) make any sale, assignment, transfer, or other conveyance of any of the Assets; (B) subject any of the Assets or any part thereof to any mortgage, pledge, security interest, or lien; or (C) enter into any agreement, license, lease or other arrangements with respect to the Station or the Assets, or amend any existing agreements, licenses or leases with respect thereto.

(iv) Seller shall not cause or permit, by any act or failure to act, any of the FCC Authorizations to expire or to be revoked, suspended, or modified, or take any action that could cause the FCC or any other governmental authority to institute proceedings for the suspension, revocation, or adverse modification of any of the authorizations issued for the operation of the Station. Seller shall not fail to prosecute with reasonable diligence any applications to any governmental authority in connection with the operation of the Station.

(v) Seller shall use its commercially reasonable efforts not to (A) default under, or breach any term of, or suffer or permit to exist any condition, that would constitute a default under the Communication Facilities Lease Agreement or the Assumed Contracts, nor (B) cause the termination, modification or amendment of the Communication Facilities Lease Agreement and Assumed Contracts. Unless Buyer shall have given its prior written consent, Seller shall not enter into any new contract or incur any obligation that will be binding on Buyer after the Closing.

(vi) Seller shall not take any action that is inconsistent with its obligations under this Agreement, that could reasonably be expected to cause any of its representations or warranties set forth herein to be untrue as of Closing in any material respect, or that could hinder or delay the consummation of the transactions contemplated by this Agreement. Seller shall use its commercially reasonable efforts to cause the transactions contemplated by this Agreement to be consummated in accordance with the terms hereof.

(vii) Notwithstanding any provision of this Agreement, pending the Closing, Seller shall maintain actual (*de facto*) and legal (*de jure*) control over the Station. Seller shall retain responsibility for the operation of the Station pending the Closing, including responsibility for: ultimate control of the daily operation of the Station; creation and implementation of policy decisions; employment and supervision of Seller's employees; and payment of expenses incurred in the operation of the Station prior to the Closing.

(b) Buyer's Pre-Closing Covenants.

(i) Buyer shall use its commercially reasonable efforts to cause the transactions contemplated by this Agreement to be consummated in accordance with the terms hereof.

(ii) Buyer shall not take any action that is inconsistent with its obligations under this Agreement, that could reasonably be expected to cause any of its representations or warranties set forth herein to be untrue as of Closing in any material respect, or that could hinder or delay the consummation of the transactions contemplated by this Agreement. Buyer shall use its commercially reasonable efforts to cause the transactions contemplated by this Agreement to be consummated in accordance with the terms hereof.

6. FCC Approval.

(a) FCC Approval Required. Consummation of the sale (the "**Closing**") is conditioned upon the FCC having given its consent in writing to the assignment from Seller to Buyer of all FCC Authorizations (the "**FCC Approval**") and, at Buyer's election, said consent having become a "Final Order." For purposes of this Agreement, ("**Final Order**") means an action by the FCC that has not been reversed, stayed, enjoined, set aside, annulled, or suspended, and with respect to which no requests are pending for administrative or judicial review, reconsideration, appeal, or stay, and the time for filing any such requests and the time for the FCC to set aside the action on its own motion have expired.

(b) Filing of FCC Application. The parties shall cooperate in good faith and jointly prepare and file the application for FCC Approval (FCC Form 314) (the "**FCC**

**Application**”) not later than ten (10) days after execution of this Agreement. The Application shall include a request for waiver of the FCC’s main studio rule (47 C.F.R. § 73.1125) in Buyer’s portion of the FCC Application.

(c) Prosecution of FCC Application. Buyer and Seller shall diligently prosecute the FCC Application and otherwise use their commercially reasonable efforts to obtain the FCC Approval as soon as possible; *provided, however*, neither Buyer nor Seller shall be required to pay consideration to any third party to obtain the FCC Approval. Buyer and Seller each shall oppose any petition to deny or other objections filed with respect to the FCC Application to the extent such petition or objection relates to such party. Each party agrees to comply with any condition imposed on it by the FCC Approval, except that no party shall be required to comply with a condition if compliance with the condition would have a material adverse effect upon it. Buyer and Seller shall oppose any requests for reconsideration or judicial review of the FCC Approval. If the Closing shall not have occurred for any reason within the original effective period of the FCC Approval, and neither party shall have terminated this Agreement, the parties shall jointly request an extension of the effective period of the FCC Approval.

(d) Closing Date and Method. The Closing shall take place on a date (the “**Closing Date**”) set by Buyer with at least ten (10) business days’ prior written notice to Seller, that is (i) not earlier than the tenth business day after the FCC Approval is granted, and (ii) not later than ten (10) days following the date upon which the FCC Approval has become a Final Order, subject to satisfaction or waiver of all other conditions precedent to the holding of the Closing. The Closing will take place by the exchange of documents by email or facsimile or by such other method as Buyer and Seller may select by mutual agreement.

7. Seller’s Representations and Warranties. Seller represents and warrants to Buyer as follows:

(a) Organization and Standing. Seller is a nonprofit corporation legally formed and constituted and in good standing under the laws of the State of California. Seller possesses all power and authority necessary to own and operate the Assets and Station and execute, deliver and perform this Agreement.

(b) Authorization and Binding Obligation. The execution, delivery, and performance of this Agreement by Seller have been duly authorized by all necessary actions on the part of Seller. This Agreement has been duly executed and delivered by Seller and constitutes the legal, valid, and binding obligation of Seller, enforceable against Seller in accordance with its terms except as 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) Current and Valid FCC Authorizations. Schedule 1(a) contains an accurate and complete list in all material respects of the FCC Authorizations as of the date hereof. Seller validly holds all authorizations that are required under the rules and regulations of the FCC for the ownership or operation of the Station. Other than the FCC Authorizations, Seller is not required to hold any license, permit or other authorization from any governmental

authority for the lawful conduct of the operation of the Station. No action or proceeding is pending or, to the knowledge of the Seller, threatened, before the FCC or other governmental or judicial body, for the cancellation, suspension or material and adverse modification of FCC Authorizations. To Seller's knowledge, there is no reason to believe that the FCC Authorizations will not be renewed in the ordinary course.

(d) Operation of the Station. Seller (i) is operating the Station in all material respects in compliance with FCC Rules and Regulations, and otherwise in compliance with all applicable local, state and Federal laws, (ii) has filed all tax returns, FCC reports and other documents required to be filed by any governmental authority with respect to the Assets or the Station; (iii) has maintained its local public inspection file in material compliance with FCC requirements, and (iv) has not stored, disposed of nor used, nor has any knowledge that any other party has disposed of or used, any hazardous substance in a manner that is likely to result in liability for Buyer under any applicable law or regulation. All material reports and other filings required by the FCC with respect to the FCC Authorizations, Seller, the Assets or the operation of the Station have been timely filed with the FCC, and all such reports and other filings are substantially complete and correct as filed. Seller has satisfied all liabilities to or in respect of any employees providing services to the Station, including, without limitation, any obligations relating to compensation or other remuneration, any employee benefit plan or other arrangement providing compensation in excess of salary or hourly wages and the withholding and payment of any related taxes. Seller is not a party to any collective bargaining agreement governing the terms and conditions of employment for any employees providing services to the business.

(e) Absence of Conflicting Agreements. There are no outstanding agreements or understandings for the sale of the Station to any party other than Buyer. Subject to obtaining FCC Approval, the execution, delivery, and performance by Seller of this Agreement and the Closing documents contemplated hereby (with or without the giving of notice, the lapse of time, or both): (i) will not conflict with the organizational documents of the Seller; (ii) will not materially conflict with, result in a breach of, or constitute a default under, any law, judgment, order, injunction, decree, rule, regulation, or ruling of any court or governmental instrumentality applicable to Seller; and (iii) will not conflict with, constitute grounds for termination of, result in a breach of, constitute a default under, or accelerate or permit the acceleration of any performance required by the terms of, any agreement, instrument, license, or permit to which Seller is a party or by which Seller may be bound.

(f) Title to and Condition of Assets. Seller has good and marketable title to the Assets. Schedule 1(b) contains an accurate and complete list in all material respects of the Tangible Assets as of the date hereof. The Tangible Assets listed on Schedule 1(b) constitute all of the assets and properties required for the operation of the Station's transmission facilities as currently operated by Seller. The Assets are free of all liens, encumbrances or hypothecations, other than Permitted Liens. On the Closing Date, each item comprising the Assets shall be in the same operating condition in all material respects as on the date of execution of this Agreement, ordinary wear and tear excepted.

(g) Communication Facilities Lease Agreement. The property leased pursuant to the Communication Facilities Lease Agreement (the "**Property**") and Seller's activities and operations on the property are in material compliance with all applicable

environmental laws and regulations and zoning, building and other laws and regulations of all governmental authorities having jurisdiction thereof. The buildings and fixtures used in the operation of the Station on the Property are suitable for their intended use as currently used by Seller. To Seller's knowledge, all utilities necessary for Seller's use of the Property are installed and in working order and are subject to valid easements. Seller has received no notice that any condemnation proceedings have been instituted or threatened against the Property.

(h) Claims and Litigation. There is no judgment outstanding or any claim or litigation or proceeding pending or, to Seller's knowledge, threatened regarding the title or interest of Seller to or in any of the Assets or the Station's operations, or which could prevent or adversely affect the ownership, use, or operation of the Station by Buyer. Except as indicated on Schedule 1(a), there is (i) no complaint or other proceeding pending, outstanding, or to Seller's knowledge threatened, before the FCC as a result of which an investigation, notice of apparent liability or order of forfeiture may be issued from the FCC relating to the Station, (ii) no FCC notice of apparent liability or order of forfeiture pending, outstanding, or to Seller's knowledge threatened, against Seller or the Station, and (iii) no investigation pending, outstanding, or to Seller's knowledge threatened, with respect to any violation or alleged violation of the Communications Act or any FCC rule, regulation or policy by Seller.

(i) Assumed Contracts. All Assumed Contracts (including the Communication Facilities Lease Agreement ) are valid, binding, and enforceable by Seller in accordance with their terms. Neither Seller nor, to Seller's knowledge, any other party to such Assumed Contracts is in material breach or default on any of the Assumed Contracts, there is no claim of breach or default by Seller, Seller has received no notice of breach or default from any other party thereto, and Seller has no knowledge of any act or omission which has occurred or which has been threatened which could result in any party to such Assumed Contracts being in breach or default thereof.

(j) Disclosure. No representation or warranty made by Seller in this Agreement, or any statement or certificate furnished by, or to be furnished by, Seller to Buyer pursuant hereto, or in connection with the transaction contemplated hereby, contains, or will contain, any untrue statement of a material fact, or omits, or will omit, to state a material fact necessary to make the statements contained therein not misleading.

8. Buyer's Representations and Warranties. Buyer represents and warrants to Seller as follows:

(a) Organization and Standing. Buyer is a nonprofit corporation legally formed and constituted and in good standing under the laws of the State of Nevada. Buyer possesses all corporate power necessary to execute, deliver and perform this Agreement and own and operate the Station.

(b) Authorization and Binding Obligation. The execution, delivery, and performance of this Agreement by Buyer have been duly authorized by all necessary actions on the part of Buyer. This Agreement has been duly executed and delivered by Buyer and constitutes the legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with its terms except as 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) Absence of Conflicting Agreements. Subject to obtaining FCC Approval, the execution, delivery, and performance by Buyer of this Agreement and the Closing documents contemplated hereby (with or without the giving of notice, the lapse of time, or both): (i) will not conflict with the organizational documents of the Buyer; (ii) will not materially conflict with, result in a breach of, or constitute a default under, any law, judgment, order, injunction, decree, rule, regulation, or ruling of any court or governmental instrumentality applicable to Buyer; (iii) will not conflict with, constitute grounds for termination of, result in a breach of, constitute a default under, or accelerate or permit the acceleration of any performance required by the terms of, any agreement, instrument, license, or permit to which Buyer is a party or by which Buyer may be bound.

(d) Buyer's Qualifications. Buyer is legally, financially and otherwise qualified to be the licensee of and acquire, own and operate the Station under the Communications Act of 1934, as amended, and the rules, regulations and policies of the FCC. Buyer knows of no fact that would, under existing law and the existing rules, regulations, policies and procedures of the FCC disqualify Buyer as assignee of the FCC Authorizations or as the owner and operator of the Station.

(e) Disclosure. No representation or warranty made by Buyer in this Agreement, or any statement or certificate furnished by, or to be furnished by, Buyer to Seller pursuant hereto, or in connection with the transactions contemplated hereby contains, or will contain, any untrue statement of a material fact or omits, or will omit, to state a material fact necessary to make the statement contained therein not misleading.

9. Risk of Loss. Risk of loss, damage, or destruction to the Assets to be sold and conveyed hereunder shall be upon the Seller until the Closing Date. After Closing, the risk of loss shall be solely upon Buyer. In the event that any such loss, damage or destruction occurring prior to Closing shall be sufficiently substantial so that any representation or warranty of Seller shall not be true and correct in all material respects at Closing (after giving consideration to any repairs, restoration or replacement to occur prior to Closing), Seller shall promptly notify Buyer in writing of the circumstances. Buyer, at any time within ten (10) days after receipt of such notice, may elect by written notice to Seller either to (i) proceed toward consummation of the transactions contemplated by this Agreement in accordance with the terms hereof, and subject to the occurrence of Closing, complete the restoration and replacement of the Assets after Closing, in which event Seller shall deliver to Buyer all insurance proceeds received in connection with such damage, destruction or other event, or (ii) if the cost of such restoration or replacement is greater than Twenty Five Thousand Dollars (\$25,000.00), terminate this Agreement.

10. Access to Information. Seller shall provide Buyer and its designated representatives access to the Assets and Station's facilities, including the Station's transmitter site, upon reasonable advance notice during normal business hours prior to Closing and at times that will not interfere with the operation of the Station. After execution of this Agreement and until Closing, Seller shall affirmatively and promptly disclose to Buyer any material matters



affecting the Assets or operation of the Station of which Seller may become aware, including claims made and contract obligations to be entered into by Seller.

11. Brokers, Costs and Expenses. Buyer and Seller shall bear their respective costs and expenses for attorneys, accountants, brokers and advisors retained by or representing them in connection with their respective negotiation and execution of this Agreement and the performance of their respective obligations hereunder. Seller shall be responsible for any fees (including, but not limited to, brokerage fees) due to Seller's broker, Patrick Communications. Buyer shall be responsible for any fees (including, but not limited to, brokerage fees) due to Buyer's broker, Public Media Company. Seller acknowledges that Buyer, at Buyer's sole cost and expense, may obtain lien, tax and judgment searches with respect to Seller and the Assets.

12. Conditions Precedent to Buyer's Obligation to Close. The obligations of Buyer to purchase the Assets and to otherwise consummate the transactions contemplated by this Agreement are subject to the satisfaction or waiver by Buyer, on or prior to the Closing Date, of each of the following conditions:

(a) The FCC Approval shall have been granted, Seller shall have complied with any conditions imposed on it by the FCC Approval that Seller is obligated to satisfy under the terms of this Agreement, and, if Buyer so elects, the FCC Approval shall have become a Final Order.

(b) The FCC shall have approved Buyer's request to waive Section 73.1125 of the FCC's Rules (47 C.F.R. § 73.1125) so as to permit Buyer to co-locate the Station's main studios with Station KNPR, which is licensed to Buyer.

(c) All representations and warranties of Seller contained in this Agreement shall be true and complete at and as of the Closing Date as if such representations and warranties were made at and as of the Closing Date except for (i) any inaccuracies that in the aggregate could not reasonably be expected to have a material adverse effect on the Assets or the operation of the Station, or (ii) any representation or warranty that is expressly stated only as of a specified earlier date, in which case such representation or warranty shall be true as of such earlier date.

(d) Seller shall have performed and complied with in all material respects all agreements, obligations, and conditions required by this Agreement to be performed or complied with by Seller prior to or at the Closing Date.

(e) Seller shall hold valid, current, and unexpired FCC Authorizations for the Station.

(f) Seller shall have obtained any required third party consents, including the consent to assign the Communication Facilities Lease Agreement .

(g) The Assets shall be free and clear of all liens and encumbrances as of Closing, other than Permitted Liens.

(h) Buyer shall have received from Seller the documents and other items to be delivered by Seller pursuant to *Section 15* of this Agreement.

(i) No injunction, restraining order or decree of any nature of any court or governmental authority of competent jurisdiction shall be in effect that restrains or prohibits Buyer from consummating the transactions contemplated by this Agreement.

13. Conditions Precedent to Seller's Obligation to Close. The obligations of Seller to sell the Assets and to otherwise consummate the transactions contemplated by this Agreement are subject to the satisfaction or waiver by Seller, on or prior to the Closing Date, of each of the following conditions:

(a) The FCC Approval shall have been granted and Buyer shall have complied with any conditions imposed on it by the FCC Approval that Buyer is obligated to satisfy under the terms of this Agreement.

(b) All representations and warranties of Buyer contained in this Agreement shall be true and complete at and as of the Closing Date as if such representations and warranties were made at and as of the Closing Date except for (i) any inaccuracies that in the aggregate could not reasonably be expected to have a material adverse effect on Buyer's ability to consummate the transaction contemplated by this Agreement, or (ii) any representation or warranty that is expressly stated only as of a specified earlier date, in which case such representation or warranty shall be true as of such earlier date.

(c) Buyer shall have performed and complied with in all material respects all agreements, obligations, and conditions required by this Agreement to be performed or complied with by Buyer prior to or at the Closing Date.

(d) Seller shall have received from Buyer the documents and other items to be delivered by Buyer pursuant to *Section 14* of this Agreement.

(e) No injunction, restraining order or decree of any nature of any court or governmental authority of competent jurisdiction shall be in effect that restrains or prohibits Seller from consummating the transactions contemplated by this Agreement.

14. Buyer's Performance at Closing. At the Closing, Buyer will deliver or will have delivered to Seller:

(a) The Purchase Price, totaling Five Hundred Fifty Thousand Dollars (\$550,000) and such instruments as Seller may reasonably require in order to consummate the transactions provided for in this Agreement; and

(b) A certificate dated as of the Closing Date, executed on behalf of Buyer by an officer of Buyer, attesting to its fulfillment of the conditions set forth in *Section 12(b)* and *Section 13(a), (b) and (c)*.

15. Seller's Performance at Closing. At the Closing, Seller shall deliver or have delivered to Buyer:

(a) Originals, if available, and otherwise, good quality copies, of the FCC Authorizations for the Station listed on Schedule 1(a), together with such assignments of the same as Buyer may reasonably require; and

(b) Such assignments and further instruments of conveyance as Buyer may reasonably require to effectuate the assignment from Seller to Buyer of the Station and Assets being conveyed and assigned herein; and

(c) A certificate dated as of the Closing Date, executed on behalf of Seller by an officer of Seller, attesting to its fulfillment of the conditions set forth in *Section 12(a), (c) and (d)*.

16. Survival of Warranties. All representations and warranties made by the parties in this Agreement shall survive the Closing and remain operative in full force and effect for a period of one (1) year (and shall not be deemed merged into any document or instrument executed or delivered at the Closing) after the Closing. All covenants and obligations of the parties in this Agreement that are not fully performed as of the Closing shall survive the Closing until fully performed.

17. Indemnification.

(a) Indemnification by Seller. Seller shall indemnify and hold harmless Buyer and any of Buyer's officers, trustees, employees, agents, successors and permitted assigns against and in respect of any and all liabilities, obligations, claims, and demands (including reasonable expenses of investigation and attorneys fees) (hereinafter collectively "**Claims**") arising out of or related to (i) Seller's operation of the Station or ownership of the Assets prior to Closing (including, but not limited to, Claims related to compliance with FCC rules and regulations); (ii) any failure by Seller to perform any covenant or obligation of Seller in this Agreement; (iii) any inaccuracy in or breach of any representation, warranty, or covenant made by Seller herein; and (iv) any Excluded Assets set forth in *Section 2* or any Excluded Liabilities set forth in *Section 4(b)*.

(b) Indemnification by Buyer. Buyer shall indemnify and hold harmless Seller and any of Seller's officers, trustees, employees, agents, successors and permitted assigns against and in respect of any and all Claims arising or related to (i) Buyer's operation of the Station or ownership of the Assets after the Closing (including, but not limited to, Claims related to compliance with FCC rules and regulations), (ii) any failure by Buyer to perform any covenant or obligation of Buyer in this Agreement, including the breach or non-performance by Buyer of the Assumed Liabilities, (iii) any inaccuracy in or breach of any representation, warranty, or covenant made by Buyer herein.

18. No Assignment. This Agreement may not be assigned by either party without the other party's prior written consent.

19. Specific Performance. The parties recognize the uniqueness of the Station and the Assets, authorizations, and attributes that are associated with its operation, and for that reason agree that Buyer shall have the right to specific performance of this Agreement upon default of Seller. Buyer shall therefore be entitled, in addition to any other remedies that may be available,

including money damages, to obtain specific performance of the terms of this Agreement. If any action is brought by Buyer to enforce this Agreement, Seller shall waive the defense that there is an adequate remedy at law.

20. Termination.

(a) Termination by Seller. This Agreement may be terminated by Seller and the purchase and sale of the Assets abandoned, if Seller is not then in material default, upon written notice to Buyer, upon the occurrence of any of the following:

(i) Buyer's Breach. If Buyer is in material breach of its obligations hereunder and Buyer fails to cure such breach within 30 days following notice of such default from Seller.

(ii) Conditions. If, on the date that would otherwise be the Closing Date, any condition precedent to the obligations of Seller set forth in this Agreement has not been satisfied or waived in writing by Seller.

(iii) Judgments. If there shall be in effect on the date that would otherwise be the Closing Date any judgment, decree, or order that would prevent or make unlawful the Closing.

(b) Termination by Buyer. This Agreement may be terminated by Buyer and the purchase and sale of the Station abandoned, if Buyer is not then in material default, upon written notice to Seller, upon the occurrence of any of the following:

(i) Seller's Breach. If Seller is in material breach of its obligations hereunder and Seller fails to cure such breach within 30 days following notice of such default from Buyer.

(ii) Conditions. If, on the date that would otherwise be the Closing Date, any condition precedent to the obligations of Buyer set forth in this Agreement has not been satisfied or waived in writing by Buyer.

(iii) Judgments. If there shall be in effect on the date that would otherwise be the Closing Date any judgment, decree, or order that would prevent or make unlawful the Closing.

(c) Termination by Either Party. This Agreement may be terminated by either party, if the terminating party is not then in material default, upon written notice, if the Closing shall not have occurred within twelve (12) months after public notice of the FCC's acceptance for filing of the assignment application.

(d) Effect of Termination.

(i) Upon termination: (i) if neither party hereto is in material breach of any provision of this Agreement, the parties hereto shall not have any further liability to each other; except that Buyer shall instruct the Seller to release the entire amount of the Good Faith

Deposit to Buyer by wire transfer of immediately available funds no later than five (5) days following Buyer's written notice requesting such payment; or (ii) if either party shall be in material breach of any provision of this Agreement, the other party shall have all rights and remedies available at law or equity, including for Buyer the right of specific performance provided in *Section 19*. Any and all provisions of this Agreement notwithstanding, neither Seller nor Buyer shall be liable to the other for punitive or consequential damages.

(ii) The parties recognize that if Seller refuses to perform under the provisions of this Agreement or otherwise breaches its obligation to consummate this Agreement, monetary damages alone would not be adequate to compensate Buyer for its injury. Buyer shall therefore be entitled, in addition to any other remedies that may be available (including, without limitation, the immediate return to Buyer of the entire amount of the Good Faith Deposit), to obtain specific performance of the terms of this Agreement. If any action is brought by Buyer to enforce this Agreement, Seller shall waive the defense that there is an adequate remedy at law.

(iii) Buyer recognizes that if the transaction contemplated by this Agreement is not consummated as a result of Buyer's breach or default, Seller would be entitled to compensation, the extent of which is extremely difficult and impractical to ascertain. If this Agreement is terminated due to the breach or default of Buyer, Seller's sole remedy shall be retention of the entire amount of the Good Faith Deposit. The parties agree that the amount of the Good Faith Deposit shall constitute liquidated damages and shall be in lieu of any other remedies to which Seller might otherwise be entitled due to Buyer's wrongful failure to consummate the transaction contemplated by this Agreement.

(iv) The rights and obligations of the parties described in this *Section 20* and *Sections 21 through 28* shall survive any termination.

21. Press Releases and Announcements. Both parties agree that they or their appointed agents shall work jointly and cooperatively in preparing all public announcements and press releases regarding the Agreement. Prior to the Closing, neither Buyer nor Seller shall make any public announcement or issue any press release regarding this Agreement or the transaction contemplated hereby without the prior written consent of the other party. Notwithstanding the foregoing, if the parties have cooperated in good faith and used commercially reasonable efforts to agree upon the timing and content of a joint announcement or release, but cannot reach such agreement, each party may make its own announcement or issue its own release so long as such announcement or release does not conflict with the issuing party's obligations under this Agreement. Neither Buyer nor Seller shall permit the airing of any remarks about the Agreement or the transaction, including, without limitation, on the Station, without the prior written consent of the other party (except for on-air announcements required by the FCC).

22. Notices. All notices, demands, and requests required or permitted to be given under the provisions of this Agreement shall be (i) in writing, may be delivered by personal delivery, sent by commercial delivery service or certified mail, return receipt requested, or sent by email (with, if available under email options, a "delivery receipt" and a "read receipt" being requested), (ii) deemed to have been given on the date of actual receipt, which may be

presumptively evidenced by the date set forth in the records of any commercial delivery service or on the return receipt, or on the date of the sender's receipt of a "read receipt" from recipient or sender's confirmation by phone of recipient's receipt, and (iii) addressed to the recipient at the address specified below, or with respect to any party, to any other address that such party may from time to time designate in a writing delivered in accordance with this *Section 22*.

If to Seller:

Open Sky Radio Corp.  
P.O. Box 181  
Cedarville, CA 96104  
Attn: Jeff Cotton, Director  
Phone: (530) 279-6262  
Email: [jc@openskyradio.org](mailto:jc@openskyradio.org)

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

John Crigler, Esq.  
Garvey Schubert Barer  
1000 Potomac Street, NW, Suite 200  
Washington, DC 20007  
Phone: 202-965-7880  
Email: [jcrigler@gsblaw.com](mailto:jcrigler@gsblaw.com)

If to Buyer:

Nevada Public Radio  
1289 S. Torrey Pines Drive  
Las Vegas, Nevada 89146  
Attn: Florence Rogers  
President and CEO  
Phone: 702-258-9895  
Email: [flo@nevadapublicradio.org](mailto:flo@nevadapublicradio.org)

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

Margaret L. Miller, Esq.  
Gray Miller Persh, LLP  
1200 New Hampshire Avenue, N.W., Suite 410  
Washington, D.C. 20036-6802  
Phone: (202) 776-2914  
Email: [mmiller@graymillerpersh.com](mailto:mmiller@graymillerpersh.com)

23. Further Assurances. Each of the parties hereto shall execute and deliver to the other party hereto such other instruments as may be reasonably required in connection with the performance of this Agreement.

24. Construction. This Agreement shall be construed and enforced in accordance with the laws of the State of Nevada. The headings are for convenience only and will not control or affect the meaning or construction of the provisions of this Agreement.

25. Entire Agreement. This Agreement and the schedules hereto supersedes all prior agreements and understandings between the parties with respect to the sale and purchase of the Assets to be sold and purchased hereunder and may not be changed or terminated orally, and no attempted change, termination, amendment, or waiver of any of the provisions hereof shall be binding unless in writing and signed by both parties. All schedules attached to this Agreement shall be deemed part of this Agreement and are incorporated herein, where applicable, as if fully set forth herein. This Agreement cannot be amended, supplemented, or modified except by an agreement in writing that makes specific reference to this Agreement or an agreement delivered pursuant hereto, as the case may be, and which is signed by the party against which enforcement of any such amendment, supplement, or modification is sought.

26. Waiver of Compliance. 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 or 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 as set forth in this Section.

27. Severability. In the event that any one or more of the provisions contained in this Agreement or in any other instrument referred to herein, shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or any other such instrument and this Agreement shall be construed in a manner that, as nearly as possible, reflects the original intent of the parties.

28. Counterparts. This Agreement may be executed in several counterparts, all of which when taken together shall constitute one Agreement. Delivery of counterpart signature pages may be effected by email of scanned copies of executed signature pages; *provided, however*, that the parties shall promptly arrange to exchange executed original signature pages by personal or commercial overnight delivery.

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

OPEN SKY RADIO CORP (SELLER)

By: J. Gilson

Title: DIRECTOR

NEVADA PUBLIC RADIO (BUYER)

By: \_\_\_\_\_

Title: \_\_\_\_\_



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

OPEN SKY RADIO CORP (SELLER)

By: \_\_\_\_\_

Title: \_\_\_\_\_

NEVADA PUBLIC RADIO (BUYER)

By: 

Title: PRESIDENT + CEO

Schedule 1(a)  
FCC Authorizations

1. KJIV FM Broadcast Station License in File Number BLED-20141023ABY as renewed on November 23, 2012 for a term expiring on October 1, 2021.

Schedule 1(b)  
Tangible Personal Property

1. STUDIO ASSETS:

- a. Apple Mac Mini Server, keyboard, monitor, mouse, external hard drive and associated station automation software.
- b. Sage 3644 EAS/CAP Endec. This unit has been provided by the Washoe County Dept. of Emergency services on a long-term loan. I do not believe ownership is transferable, but that it can remain in service (to KJIV) indefinitely.
- c. Sage 4 channel FM/Weather receiver.

2. TOWER ASSETS:

- a. Nautel VS1 transmitter (warrantied to 9/18), Jampro RCBC-D03 bandpass filters, equipment rack, Cisco router, Shively 2-bay 6812b w/radomes & associated mast and transmission line.

Schedule 1(c)  
Communication Facilities Lease Agreement

See attached.

Agreement Number: \_\_\_\_\_

### **COMMUNICATION FACILITIES LEASE AGREEMENT**

This Agreement is made and entered into this 30<sup>th</sup> day of September, 2016, by and between ELKO TELEVISION DISTRICT, hereinafter referred to as the LESSOR, and OPEN SKY RADIO CORP., hereinafter referred to as the LESSEE.

### **WITNESSETH**

WHEREAS, pursuant to the provisions contained in the charter of the ELKO TELEVISION DISTRICT, the elected board may enter into agreements necessary to carry out the lease of space and/or facilities for the public good; and

WHEREAS, LESSEE desires to enter into a lease with the above named LESSOR so as to enable the LESSEE to install communication equipment belonging to LESSEE;

WHEREAS, this lease supercedes and replaces the previous lease entered into by the LESSOR and LESSEE; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, it is hereby agreed by and between the parties as follows:

### **ARTICLE I – THE PREMISES AND ITS USE**

The LESSOR hereby agrees to lease unto LESSEE and the LESSEE hereby agrees to lease from the LESSOR that space within that certain property, commonly known as the Communications Building and Tower, located on Virginia Peak, in the County of Washoe, State of Nevada (the Leased Property), for such uses as will accommodate the LESSEE's installation and operation of communications equipment on the subject property, said equipment to include and be limited to equipment listed by schedule in Article 4, including associated filters and IM suppression equipment.

### **ARTICLE II- TERM OF LEASE**

The LESSOR hereby agrees to grant a Lease unto LESSEE, and LESSEE hereby agrees to accept a Lease from LESSOR, relating to the subject premises heretofore described, with the term of said Lease commencing on the 1<sup>st</sup> day of October, 2016, and terminating on the 30<sup>th</sup> day of September, 2021, unless this agreement been renewed or terminated according to the provisions hereinafter set forth herewith.

### **ARTICLE III - WARRANTY OF TITLE; COMPLIANCE WITH THE LAW**

LESSOR represents, warrants and covenants to LESSEE that (a) LESSOR otherwise fully legally authorized to lease the Leased Premises free and clear of any liens, encumbrances, charges, security interests or other such title defects; and (b) LESSEE shall have the quiet enjoyment of the Leased Premises during the term of this Agreement.

The parties shall comply with all statutes, rules, orders, building codes, ordinances, requirements, and regulations of the City, County, State, and Federal governments, applicable to the premises.

#### ARTICLE IV - FEES AND CHARGES

LESSEE agrees to pay monthly, in advance, the LESSOR the sum of \$500.00 per month. LESSEE shall tender payment to the LESSOR by the 5<sup>th</sup> day of each month. The services to be provided by LESSOR to the LESSEE in consideration of the payment by LESSEE of the aforementioned sum shall include:

- i. **Facility Space:** One (1) standard 19 inch (W) by 84 inch (H) rack
- ii. **Tower Space:** For a two bay FM Broadcast antenna and one small parabolic dish or Yagi.
- iii. **Utilities:** include air conditioning and electricity
- iv. **Customer equipment includes:**
  - a. XMTR (Nautel VS1)
  - b. Cavities
  - c. UPS
  - d. LAN equipment and antenna
  - e. Associated wiring, cabling, grounding and lightning protection
- v. **Entry:** to the building through combination lock.

#### ARTICLE V - REPAIR AND MAINTENANCE

1. LESSOR agrees to maintain the property in as good a state of repair as when first occupied, ordinary wear and tear, obsolescence and damage by the elements, fire or other casualty excepted.

2. LESSOR agrees to make any and all replacements and or repairs to existing buildings and structures, including but not limited to the structural, heating, air conditioning, flooring, roofing, wall, electrical, gas and plumbing elements. Components and structures requiring replacement and or repair as a result of any defect, wear or damage not caused by the negligence of LESSEE.

3. LESSOR agrees to conduct any and all repairs and maintenance at reasonable times and without undue inconvenience to LESSEE. The LESSEE agrees to permit the LESSOR, its agents and employees, to have access to and to enter the Premises at all reasonable and necessary times, for any purpose connected with the repair, care and improvement of the Premises.

4. The parties agree that LESSEE shall be entitled to an abatement or a reduction in the lease payment in the event of any impairment of LESSEE's use or enjoyment of the Premises.

## **ARTICLE VI- INTERFERENCE**

In the event that interference occurs after initialization of the equipment operation approved by LESSOR, the parties agree to jointly pursue identification and resolution of the interference. If the cause is determined, the "first in" user shall be allowed to maintain the use at the site over other users who have come in after. If such resolution is not economically feasible, as determined by the LESSEE, the LESSEE shall remove its equipment and the Agreement will be terminated at no fault of either party.

## **ARTICLE VII - UTILITY PRICE INCREASES**

In the even that the cost of utilities increases to Lessor in a contract year, LESSOR shall notify LESSEE at least 60 days prior to the anniversary date of the contract of the increase and estimated costs. Such notice may be given by certified mail, mail or email. LESSEE shall provide LESSOR with written notification of acceptance or rejection within 30 days of such notice. If accepted, the price increase will be added into the upcoming contract year. If rejected, the contract will terminate at the end of the current contract year. If the LESSEE fails to respond to the notification, the price increase will be deemed accepted for the upcoming contract year.

## **ARTICLE VIII – LIABILITY DEFENSE AND INDEMNIFICATION**

The liability of both parties under this Agreement shall not be subject to punitive damages. Actual damages for any LESEE breach shall never exceed the amount of funds which have been appropriated for payment under this Agreement, but not yet paid for the fiscal year budget in existence at the time of the breach. Subject to the foregoing, each party agrees to indemnify, defend and hold harmless the other party, its agents, officers, employees and assigns from and against any third party claims or losses premised on the indemnifying party's breach of this agreement, negligence or violation of applicable law.

## **ARTICLE IX- INSURANCE**

LESSOR agrees and accepts that LESSEE will maintain adequate coverage during the term of the lease.

## **ARTICLE X - CHOICE OF LAW AND FORUM**

This Agreement and the rights and obligations of the parties hereto shall be governed by and construed according to the laws of the State of Nevada. The parties consent to the exclusive jurisdiction of the Nevada state district courts for enforcement of this Agreement

## **ARTICLE XI - OPTION TO RENEW**

LESSEE shall have the option to renew this Agreement for five (5) successive five (5) year terms automatically with no notice. Should LESSEE not desire to renew, LESSEE shall serve LESSOR with written notice of its intention not to renew at least ninety (90) days prior to the expiration of the Agreement term. The monthly lease amount may be renegotiated at the time of renewal. The exercise of the renewal option shall not be effective and binding upon the LESSEE unless and until the same has been approved by the appropriate official action of the LESSEE.

## ARTICLE XII - NOTICES

Except as otherwise provided for within this Agreement, all notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile or electronic mail with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted and addressed to the other party at the address set forth below:

LESSOR: Paul Gardner  
Elko Television District  
P.O. Box 456  
Elko, NV 89803  
(775) 778-0561  
(775) 738-4056 (Fax)  
elkotvdistrict@gmail.com

LESSEE: Jeff Cotton, Director  
P.O. Box 181  
Cedarville, CA 96104  
(530) 279-6262  
jc@openskyradio.org

## ARTICLE XIII -TERMINATION, BREACH, AND DEFAULT

This Agreement may be terminated unilaterally for cause, upon thirty (30) calendar days service of written notice.

A default or breach may be declared with or without termination. This Agreement may be terminated by either party upon service of written notice of default or breach to the other party as follows:

- a. if a party hereto fails to provide or satisfactorily perform any of the work, conditions or services called for by this agreement.
- b. If any state, county, city, or federal license, authorization, waiver, permit, qualification or certification requirement by statute, ordinance, law or regulation to be held by LESSOR to provide the services required by this Agreement is denied, revoked, disbarred, excluded, terminated, suspended, lapsed or not renewed; or
- c. If LESSOR becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or
- d. If a party hereto materially breaches any material duty under this agreement and any such breach impairs the other party's ability to perform.

Failure to declare a breach or the actual waiver of any particular breach of the Agreement or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

Except as otherwise provided for by law or this Agreement, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including but not limited to actual damages, and the prevailing party's attorneys fees and costs.



The parties agree that upon termination of this Agreement, LESSEE will peaceably and quietly leave, surrender and yield up to the LESSOR the Leased Premises.

#### ARTICLE XIV - MISCELLANEOUS

All covenants and agreements herein contained shall extend to and be obligatory upon the heirs, executors, administrators, and successors or assigns as the case may be, of the respective parties.

It is agreed to by and between the parties that LESSEE, upon keeping and performing the covenants herein contained, shall at all times during said lease peaceably and quietly have, hold, and enjoy the Leased Property without suit, trouble, or hindrance from the LESSOR, provided, however, and it is further agreed, LESSEE will perform and fulfill each and every condition and covenant contained herein, unless such performance is excused.

LESSEE agrees that upon the termination of the Lease, it shall remove or cause to be removed, at its expense, any and all improvements erected or placed by it on said premises, unless otherwise agreed upon by LESSOR.


To the fullest extent permitted by law, including but not limited to NRS Chapter 41 liability limitations, in the event of legal action brought by either party to enforce the terms hereof or relating to the premises, the prevailing party shall be entitled to all costs incurred in connection with such action, including reasonable attorneys fees.

Neither party shall assign, transfer, or delegate any rights, obligations or duties under this Agreement without the prior written consent of the other-party, which consent shall not be unreasonably withheld, subject to the provisions herein.


The parties hereto represent and warrant that the person executing this Agreement on behalf of each party has full power and authority enter into this Agreement.

IN WITNESS WHEREOF, LESSEE and LESSOR have executed this agreement on the date indicated on page 1 of this Agreement.

LESSOR:

  
Paul Gardner, Chairman  
Elko Television District Board

LESSEE:

  
Jeff Cotton, Director  
Open Sky Radio Corp.

Section 1(d)  
Assumed Contracts

None

Schedule 3  
Form of Escrow Agreement

## ESCROW AGREEMENT

THIS ESCROW AGREEMENT (the "Agreement") is made as of this \_\_3rd\_\_ day of November, 2016, by and among OPEN SKY RADIO CORP., a nonprofit corporation organized in the State of California ("Seller"), NEVADA PUBLIC RADIO, a nonprofit corporation organized in the State of Nevada ("Buyer") and Patrick Communications, L.L.C., a Maryland limited liability company ("Escrow Agent") (individually, a "Party" and, collectively, the "Parties").

### Recitals

Seller and Buyer are parties to an Asset Purchase Agreement ("APA") of even date for the sale and purchase of noncommercial educational FM Station KJIV, Sun Valley, Nevada ("Station"), including the authorizations issued by the Federal Communications Commission.

The Parties desire Escrow Agent to hold and Escrow Agent is willing to hold certain deposit monies in escrow as contemplated by the APA.

### Agreement

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, and intending to be legally bound, Seller, Buyer and Escrow Agent agree as follows:

1. Escrow Account and Deposit. The Escrow Agent has established, or simultaneously with the execution of this Agreement will establish, an account with an FDIC insured national or regional bank into which Buyer has deposited, or within three (3) business days of the date of execution of this Agreement will deposit, Twenty Seven Thousand Five Hundred Dollars (\$27,500). Upon receipt of such deposit, the Escrow Agent shall provide Buyer and Seller confirmation thereof, and shall hold and disburse such deposit only as set forth in this Agreement. Such deposit, together with accrued interest (if any), is referred to herein as the "Deposit."

2. Release of Deposit by Escrow Agent. The Escrow Agent shall promptly release all or a portion of the Deposit to Buyer or Seller, as the case may be, upon the first to occur of the following circumstances:

(i) the Escrow Agent receives joint written instructions from Seller and Buyer directing the Escrow Agent to make such release; or

(ii) the Escrow Agent receives a final order of a court of competent jurisdiction authorizing the Escrow Agent to make such release; or

(iii) the Escrow Agent receives joint written instructions from Seller and Buyer authorizing the release of the Deposit to Seller as liquidated damages for Buyer's failure to perform according to the terms of the APA.

3. Reliance by Escrow Agent. The Escrow Agent shall be entitled to rely upon and act in accordance with any of: (a) the joint written instructions of Seller and Buyer, and (b) a final order of a court of competent jurisdiction authorizing the Escrow Agent to release the Deposit, or any portion thereof, to Buyer or Seller.

4. Conflicting Demands. If conflicting demands are made upon the Escrow Agent, the Escrow Agent shall not be required to resolve such dispute or take any action, but may await resolution of the dispute by joint instructions from Seller and Buyer or by receipt of a final order from a court of competent jurisdiction.

5. Fees of Escrow Agent. The Escrow Agent shall not charge a fee for its services.

6. Rights and Duties of Escrow Agent.

(a) No assignment of the interest of any of the parties to this Agreement shall be binding upon the Escrow Agent unless and until written evidence of such assignment in a form satisfactory to the Escrow Agent shall be filed with and accepted by the Escrow Agent.

(b) The Escrow Agent shall have no duties other than those expressly imposed on it herein.

(c) In the event that the Deposit or any proceeds thereof shall be attached, garnished, or levied upon by an order of any court, or the delivery thereof shall be stayed or enjoined by an order of court, or any order, judgment or decree shall be made or entered by any court affecting the property deposited under this Agreement, or any part thereof, the Escrow Agent is expressly authorized in its sole discretion to obey and comply with all writs, orders or decrees so entered or issued, which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction, and in case the Escrow Agent obeys or complies with any such writ, order or decree it shall not be liable to any of the parties hereto or to any other person, firm or corporation, by reason of such compliance notwithstanding that such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated.

(d) The Escrow Agent shall resign, effective as of thirty (30) days following the earlier of (i) the written request of either Seller or Buyer to the Escrow Agent; or (ii) the written notice of the Escrow Agent to Seller and Buyer. Prior to the expiration of such thirty (30) day period, Buyer shall appoint an independent national or regional bank, reasonably agreeable to Seller and to Buyer, to serve as the successor escrow agent and the Escrow Agent shall transfer the Deposit or any proceeds thereof then held in escrow under this Agreement to such successor escrow agent. Any fees charged by the successor escrow agent shall be paid one-half by Buyer and one-half by Seller.

(e) Seller and Buyer, jointly and severally, agree to indemnify the Escrow Agent and hold him harmless against any and all liabilities incurred by him hereunder, except for liabilities incurred by the Escrow Agent resulting from his own willful misconduct or gross negligence. As between Seller and Buyer, each Party shall be responsible for the payment of one-half of any such liabilities.

7. Notices. Any notice or other communication required or permitted hereunder shall be deemed to have been sufficiently given when delivered personally or by such other method (including recognized air courier or registered or certified mail, return receipt requested), addressed as follows:

If to Seller:

Open Sky Radio Corp.  
P.O. Box 181  
Cedarville, CA 96104  
Attn: Jeff Cotton, Director  
Phone: (530) 279-6262  
Email: [jc@openskyradio.org](mailto:jc@openskyradio.org)

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

John Crigler, Esq.  
Garvey Schubert Barer  
1000 Potomac Street, NW, Suite 200  
Washington, DC 20007  
Phone: 202-965-7880  
Email: [jcrigler@gsblaw.com](mailto:jcrigler@gsblaw.com)

If to Buyer:

Nevada Public Radio  
1289 S. Torrey Pines Drive  
Las Vegas, Nevada 89146  
Attn: Florence Rogers  
President and CEO  
Phone: 702-258-9895  
Email: [flo@nevadapublicradio.org](mailto:flo@nevadapublicradio.org)

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

Margaret L. Miller, Esq.  
Gray Miller Persh, LLP  
1200 New Hampshire Avenue, N.W., Suite 410  
Washington, D.C. 20036-6802  
Phone: (202) 776-2914  
Email: [mmiller@graymillerpersh.com](mailto:mmiller@graymillerpersh.com)

if to Escrow Agent:

Patrick Communications, LLC  
6805 Douglas Legum Drive #100

Elkridge, Maryland 21075  
Attn: Greg Guy  
Phone: (410) 799-1740  
Email: greg@patcomm.com

or to such other address as may be specified by any party in a written notice to the other parties.

8. Governing Law. This Agreement shall be construed under the laws of the State of Nevada without giving effect to choice of law provisions.

9. Waiver. This Agreement may be amended or modified, and any term may be waived, only if such amendment, modification or waiver is in writing and signed by all parties.

10. No Third Party Beneficiaries. This Agreement is a personal one, the duty of the Escrow Agent being only to the parties hereto, their successors or assigns, and to no other person whatsoever.

11. Counterparts. This Agreement may be executed in separate counterparts.

[SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE TO ESCROW AGREEMENT

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their respective duly authorized officers all as of the day and year first above written.

BUYER: NEVADA PUBLIC RADIO

By:   
Florence Rogers, President and CEO

SELLER: OPEN SKY RADIO CORP.

By: \_\_\_\_\_  
Jeff Cotton, Director

ESCROW AGENT: PATRICK COMMUNICATIONS, L.L.C.

By: \_\_\_\_\_  
Susan Patrick, Managing Partner



SIGNATURE PAGE TO ESCROW AGREEMENT

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their respective duly authorized officers all as of the day and year first above written.

BUYER: NEVADA PUBLIC RADIO

By: \_\_\_\_\_  
Florence Rogers, President and CEO

SELLER: OPEN SKY RADIO CORP.

By:  \_\_\_\_\_  
Jeff Cotton, Director

ESCROW AGENT: PATRICK COMMUNICATIONS, L.L.C.

By: \_\_\_\_\_  
Susan Patrick, Managing Partner

SIGNATURE PAGE TO ESCROW AGREEMENT

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their respective duly authorized officers all as of the day and year first above written.

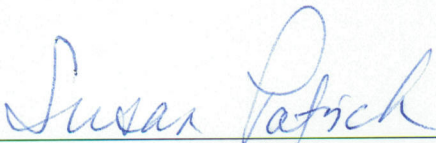
BUYER: NEVADA PUBLIC RADIO

By: \_\_\_\_\_  
Florence Rogers, President and CEO

SELLER: OPEN SKY RADIO CORP.

By: \_\_\_\_\_  
Jeff Cotton, Director

ESCROW AGENT: PATRICK COMMUNICATIONS, L.L.C.

By:  \_\_\_\_\_  
Susan Patrick, Managing Partner