

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "Agreement") is entered into as of the 13th day of ~~APRIL~~, 2015, by and between **Educational Communications of Colorado Springs, Inc.** ("Seller"), **Mountain Community Translators, LLC** ("Buyer") and Mauna Towers, LLC ("Mauna").

Background

WHEREAS, Seller holds a construction permit (the "Permit") issued by the Federal Communications Commission ("FCC") for FM Translator Station K264BO, Granby, Colorado (Facility ID No. 142132) (the "Station"); and

WHEREAS, subject to FCC consent, Seller wishes to sell the Permit for the Station to Buyer, and Buyer wishes to acquire same from Seller.

WHEREAS, Seller wishes to lease space for one of its translator stations on Mauna's Mt. Princeton tower site and Mauna wishes to lease space at that tower site to Seller for its translator station.

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 Permits.

a. Subject to the terms and conditions set forth in this Agreement, Seller agrees to convey, transfer and assign to Buyer at the Closing (as defined in Section 3) all of Seller's right, title and interest in and to the Permit for the Station (copies of which are annexed hereto in Schedule 1). There are no other assets relating to the Station being sold.

b. The consideration for the Permit shall be the agreement by Mauna, a company owned and controlled by principals of Buyer, to enter into a Tower Space Lease, attached hereto as Attachment A. The Tower Space Lease shall provide for the placement of Seller's translator station on a tower owned or controlled by Mauna at a tower site located at the NAD27 coordinates N40-44-44, W106-11-53 at Mt. Princeton in Chaffee County, Colorado for an initial ten (10) year term without any monthly lease rate and with a renewal term of ten (10) years at a monthly lease rate of One Hundred Dollars (\$100.00) per month. At the Closing, Mauna and Seller shall deliver executed copies of the Tower Space Lease to each other.

2. FCC Consent. Within three (3) 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 Permit for the Station (the "FCC Consent"). Each party shall be responsible for its own costs relating to the preparation of the Assignment Application. As a commercial entity, Buyer shall be responsible for payment of all FCC filing fees. Buyer and Seller agree to proceed expeditiously and with due diligence to use their best efforts to cooperate

with each other in seeking the FCC's approval of the transaction contemplated herewith.

3. **Closing.** Within ten (10) business days after the FCC Consent in an FCC public notice becomes final, that is no longer subject to appeal or review, the parties shall consummate the transaction contemplated by this Agreement at a closing (the "Closing"); provided, however, Buyer, at its sole discretion, may consummate the transaction on grant of FCC consent prior to finality. At the Closing, Seller shall deliver to Buyer a Bill of Sale and an Assignment of Construction Permit and any other documents of conveyance reasonably requested by Buyer and necessary to consummate the transaction contemplated by this Agreement. Buyer and Seller shall each deliver to the other a certificate executed by an officer or managing member of the respective companies certifying that the representations and warranties of such party contained herein are true and correct as of the Closing Date, as if made on such date. As noted above, Mauna and Seller shall also deliver to each other executed copies of the Tower Space Lease.

4. **Pre-Closing Covenants.** Should Buyer wish to modify the facilities of the Station prior to Closing, Seller will cooperate in the filing of such applications and provide written permission to Buyer for filing with the FCC, as necessary; however, Buyer shall be responsible for the payment of all legal and engineering costs associated with such filings. 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. **Condition Precedent to Closing.**

The parties acknowledge and agree that the FCC Consent to the assignment of the Permit from Seller to Buyer is a condition precedent to the Closing provided that such Consent is final, that is, no longer subject to reconsideration or appeal.

6. **Representations and Warranties.** 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 any party's legal ability to perform its responsibilities hereunder. Seller represents and warrants to Buyer that no person or entity is entitled to any brokerage commissions or finder's fees in connection with the transaction contemplated by this Agreement as a result of any action taken by Seller. Buyer represents and warrants to Seller that no person or entity is entitled to any brokerage commissions or finder's fees in connection with the transaction contemplated by this Agreement as a result of any action taken by Buyer. Seller represents and warrants to Buyer that the Permit has been validly issued by the FCC, that it is in full force and effect, that it constitutes all of the authorizations issued by the FCC in connection with the Station and that it is not subject to any restriction or condition that would limit the operation of the Station. Seller further warrants that the authorizations shall be unencumbered in any way and shall be free and clear of all claims. Seller makes no representations or warranties regarding the feasibility of constructing the Station in a timely manner or at the transmitter sites specified in the Permit. Mauna represents and warrants to Seller that it has available space on an owned tower located on Mt. Princeton in Chaffee County, Colorado at the coordinates specified at Paragraph 1 (b), *infra*, which Mauna has the authority to

lease to Seller on those terms specified in the Tower Space Lease to be executed by Seller and Mauna at the Closing.

7. **Termination.** This Agreement may be terminated at any time prior to the Closing as follows:

- a. by mutual written consent of Buyer and Seller; or
- b. by written notice from a party that is not then in material breach of this Agreement if another party has failed to cure its material breach of any of its representations, warranties or covenants under this Agreement within thirty (30) days after receipt of written notice of such breach from the party not in material breach; or
- c. by written notice of a party to another party, if the Closing shall not have occurred by the first anniversary from the filing of the Assignment Application, provided, however, that if the Closing shall not have occurred because the FCC Consent shall not have been granted, this Agreement may not be terminated by a party who materially contributed to the delay in the issuance of the FCC Consent.

8. **Effect of Termination.**

- a. If this Agreement is terminated by the parties pursuant to Section 7(a) or (c), then no party shall have any further liability to the other, and this Agreement shall be deemed null and void and of no further force and effect.
- b. If this Agreement is terminated by Seller or Buyer pursuant to Section 7(b), subject to Section 9(a) hereof, that party shall have all rights to pursue any remedy available to it for breach.

9. **Miscellaneous.**

- a. **Specific Performance.** Buyer and Seller recognize that if Seller refuses to perform its obligations under this Agreement, monetary damages alone would not be adequate to compensate Buyer for its injury. Buyer shall therefore be entitled to obtain specific performance 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 and to interpose no opposition to the propriety of specific performance as a remedy. Buyer's right to seek specific performance shall be an alternative to and not additional to the exercise of any other remedies available to Buyer at law. Seller and Mauna recognize that if Mauna refuses to perform its obligations under this Agreement, monetary damages alone would not be adequate to compensate Seller for its injury. Seller shall therefore be entitled to obtain specific performance of this Agreement. If any action is brought by Seller to enforce this Agreement, Mauna shall waive the defense that there is an adequate remedy at law and to interpose no opposition to the propriety of specific performance as a remedy. Seller's right to seek specific performance shall be an alternative to and not additional to the exercise of any other remedies available to Seller at law.

b. Notices. All notices, demands, requests or other communication required or permitted hereunder shall be in writing and sent by overnight air courier service (charges prepaid), or personal delivery 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 Seller:

Educational Communications of Colorado Springs, Inc.
1665 Briargate Boulevard, Suite 100
Colorado Springs, CO 80920-3400
Attn: Dr. Ronald A. Johnson

With copy (which shall not constitute notice) to:

Lee Peltzman, Esquire
Shainis & Peltzman, Chartered
1850 M Street, N.W.
Suite 240
Washington, DC 20036

If to Buyer:

Mountain Community Translators, LLC
87 Jasper Lake Road
Loveland, CO 80537
Attn: Victor A. Michael, Jr.

With copy (which shall not constitute notice) to:

A. Wray Fitch, III, Esquire
Gammon & Grange, P.C.
8280 Greensboro Drive, 7th Floor
McLean, VA 22102-3807

If to Mauna:

Mauna Towers, LLC
87 Jasper Lake Road
Loveland, CO 80535
Attn: Victor A. Michael, Jr.

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

A. Wray Fitch, III, Esquire
Gammon & Grange, P.C.
8280 Greensboro Drive, 7th Floor

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

c. Assignment and Binding Effect. No party may assign its rights or obligations under this Agreement without the prior written consent of the other party, except that Buyer may assign its rights and obligations under this Agreement without the prior consent of Seller to any business entity which owns and controls Buyer, which Buyer owns and controls or which is owned and controlled by the same entity which owns and controls Buyer. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

d. 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 Colorado, without regard to the choice of law provisions thereof.

e. 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. Delivery of counterpart pages may be effected via scanned email or facsimile transmission of executed pages.

f. 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 agreements 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.

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

h. 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.

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

j. Headings and Cross References. Headings 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.

k. Litigation Expenses. If a formal legal proceeding is instituted by a party to enforce that party's rights under this Agreement, the prevailing party in the proceeding shall be reimbursed by the other non-prevailing party or parties to the legal proceeding for all reasonable costs incurred thereby, including but not limited to reasonable attorney's fees.

l. 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.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day

and year first written above

SELLER:

EDUCATIONAL COMMUNICATIONS OF
COLORADO SPRINGS, INC.

By: _____
Ronald A. Johnson
Chairman

BUYER:

MOUNTAIN COMMUNITY
TRANSLATORS, LLC

By: _____
Victor A. Michael, Jr.
Sole Member

MAUNA TOWERS, LLC

By: _____
Victor A. Michael, Jr.
Sole Member

and year first written above

SELLER:

EDUCATIONAL COMMUNICATIONS OF
COLORADO SPRINGS, INC.

By: 

Ronald A. Johnson
Chairman

BUYER:

MOUNTAIN COMMUNITY
TRANSLATORS, LLC

By: 

Victor A. Michael, Jr.
Sole Member

MAUNA TOWERS, LLC

By: 

Victor A. Michael, Jr.
Sole Member