

**ASSET PURCHASE AGREEMENT**

**between**

**SPOKANE SCHOOL DISTRICT NO. 81**

**and**

**FRIENDS OF KSPS**

**April 16 2013**

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**ASSET PURCHASE AGREEMENT**  
**[Station KSPS-TV and Associated TV Translator Stations]**

This **ASSET PURCHASE AGREEMENT** (this "Agreement"), dated as of April ~~16~~ 2013, is entered into between **SPOKANE SCHOOL DISTRICT NO. 81**, a Washington State municipal corporation ("Seller"), and **FRIENDS OF KSPS**, a Washington State nonprofit corporation ("Buyer").

**Recitals**

A. Seller is the licensee of noncommercial educational television Station KSPS-TV, Spokane, Washington, Facility ID No. 61956 (the "Station"), and the associated TV translator stations listed in Schedule A, pursuant to licenses issued by the Federal Communications Commission (the "FCC").

B. Seller desires to sell and assign to Buyer, and Buyer wishes to buy and take assignment of, certain assets of Seller and the Licenses as set forth herein, on the terms and subject to the conditions hereinafter set forth, subject to the prior approval of the FCC.

In consideration of the foregoing and the mutual covenants contained herein, Buyer and Seller agree as follows:

**SECTION 1**  
**SALE AND PURCHASE OF ASSETS**

**1.1 Agreement to Sell and Buy.**

Seller shall sell, convey, and deliver to Buyer, and Buyer shall purchase, acquire and accept, at the Closing, free and clear of all liens and encumbrances except as otherwise expressly provided herein, the licenses and assets owned or held by Seller and described in this Section 1.1 (collectively, the "Transferred Assets"). The Transferred Assets include but are not limited to the following:

- (a) all licenses and authorizations issued by the FCC for the operation of the Station and the TV translator stations (the "FCC Licenses"), all of which are listed in Schedule 3.4 hereto;
- (b) the tangible personal property owned by Seller (the "Personal Property"), which is listed on Schedule 3.6 hereto, specifically including the TV translator equipment and the transmission Tower(s) for the Station, subject to the ground lease related thereto, including any additions thereto or replacements thereof made between the date of this Agreement and the Closing, and less any retirement or dispositions thereof made between the date of this Agreement and the Closing in the ordinary course of business and consistent with the past practices of Seller;
- (c) the contracts and agreements listed on Schedule 3.7 hereto, together with all contracts, leases and agreements entered into by Seller between the date of

this Agreement and the Closing in the ordinary course of business, consistent with the past practices of Seller and in accordance with this Agreement and which Buyer specifically agrees in writing to assume at the Closing (collectively, the "Assumed Contracts");

- (d) the files and records of Seller relating to the operations of the Station or the Transferred Assets, all applications and filings with the FCC, technical information and engineering data, all files and records required to be maintained in accordance with the rules, regulations and policies of the FCC ("FCC Rules"), and all written Assumed Contracts; and
- (e) All intangible and intellectual property associated with the Station, specifically including but not limited to the Station's goodwill, call sign, domain name, website and web content as it relates to the Station, URL, trademarks, copyrights, slogans, programming originated by the Station, and promotional materials, as more fully described in Schedule 3.9.
- (f) All right, title and interest in and to the real property and improvements thereon described in "Deed of Gift" filed at page 232628C vol. 876 page 545 of Spokane County Auditor.

#### 1.2 Excluded Assets.

Notwithstanding the foregoing or any other provisions of this Agreement, the Transferred Assets to be conveyed to Buyer hereunder shall exclude the following (all of which shall be referred to herein collectively as the "Excluded Assets");

- (a) all pension, health insurance, and other employee benefit plans maintained by Seller for the benefit of the Seller's employees;
- (b) cash and cash equivalents;
- (c) Any items of personal property not listed on Schedule 3.6 except as described below.

Notwithstanding the preceding provisions of Sections 1.1 and 1.2, all assets used or useful in the ownership or operation of the Station, except as such assets relate principally to the educational mission and activities of the Seller, are included in the purchase and sale, and all assets which relate principally to such educational mission and activities are excluded from such sale.

#### 1.3 Assumption of Liabilities and Obligations.

On the terms and subject to the conditions set forth in this Agreement, Buyer shall be liable for the following obligations to the extent such obligations accrue from and after the Closing: (i) all obligations and liabilities arising out of Buyer's ownership of the Transferred Assets; (ii) all obligations and liabilities of Seller under the Assumed Contracts; and (iii) all

obligations and liabilities of Seller under the FCC Licenses and all other Transferred Licenses transferred to Buyer. All of the foregoing liabilities and obligations assumed by Buyer under this Agreement shall be referred to herein collectively as the "Assumed Liabilities."

#### 1.4 Retained Liabilities.

Notwithstanding anything to the contrary in this Agreement, Buyer does not assume or agree to pay, satisfy, discharge or perform any liabilities, obligations or commitments of Seller of any nature whatsoever other than the Assumed Liabilities. All other obligations and liabilities shall remain and be the obligations and liabilities solely of Seller, including but not limited to, and notwithstanding anything in Section 1.3 to the contrary, (i) any and all liabilities and obligations of Seller relating to any current or former employees of Seller, (ii) any and all liabilities and obligations of Seller relating to or arising in connection with any Excluded Asset, (iii) those expenses and taxes that are the obligation of Seller as provided in Section 6.2(b), and (iv) all liabilities which accrue from the ownership of the Transferred Assets, the terms and conditions of an Assumed Contract, or the operation of the Station through the date next preceding the date of Closing. All such liabilities, obligations and commitments of Seller described in this Section 1.4 shall be referred to herein collectively as the "Retained Liabilities."

### **SECTION 2** **PURCHASE PRICE**

#### 2.1 Purchase Price and Manner of Payment.

- (a) The consideration for the assignment and transfer of the Transferred Assets shall be One Million Dollars (\$1,000,000) to be paid as described in Section 2.1(b), below.
- (b) Coincident with the Closing, Seller is reimbursing Buyer for Buyer's contribution to the renovation and construction of Seller's KSPS Facility, pursuant to an Agreement dated September 8, 1993. The amount of that reimbursement is One Million Six Hundred Forty Two Thousand Five Hundred Dollars (\$1,642,500.00). At the Closing, the Buyer shall transfer such contractual right to reimbursement to Seller pursuant to the terms of the Purchase and Sale Agreement attached as Schedule 7.1(g)(4), and shall offset, dollar-for-dollar, the purchase price hereunder by such amount, the Seller paying the Buyer the difference therein, subject to prorates and other amounts credited and charged to the parties at Closing.

### **SECTION 3** **REPRESENTATIONS AND WARRANTIES OF SELLER**

As an inducement to Buyer to enter into this Agreement, Seller makes the following representations and warranties to Buyer, each of which is true and correct on the date hereof and shall survive the Closing for the period set forth herein:

### **3.1 Organization, Standing and Authority.**

Seller is a Washington State municipal corporation duly organized, validly existing and in good standing under the laws of the State of Washington. Seller has all requisite power and authority (i) to own, lease and use its assets as presently owned, leased and used, (ii) to conduct the business and operations of Seller as presently conducted, (iii) to execute and deliver this Agreement and each agreement being delivered hereunder (a "Related Agreement"), and (iv) to perform and comply with all of the terms, covenants, and conditions to be performed and complied with by Seller hereunder and thereunder.

### **3.2 Authorization and Binding Obligation.**

The execution, delivery and performance by Seller of this Agreement and each Related Agreement to which Seller is or shall be a party, and the consummation by Seller of the transactions contemplated hereby and thereby, have been duly authorized by all necessary corporate action. This Agreement and each Related Agreement to which Seller is or shall be a party has been, or at the Closing will be, duly executed and delivered by Seller. This Agreement constitutes, and on the Closing Date each Related Agreement to which Seller is a party will constitute, the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity.

### **3.3 Absence of Conflicting Agreements and Required Consents.**

Subject to obtaining FCC Consent (as defined in Section 6.1) and other third party consents that may be required to assign any of the Assumed Contracts to Buyer, all of which third party consents are set forth on Schedule 3.3, the execution, delivery and performance by Seller of this Agreement and the Related Agreements to which Seller is or shall be a party, (i) do not require the consent of any third party, (ii) will not conflict with any provision of the organizing documents of Seller, (iii) will not conflict with, result in a breach of, or constitute a default under, any applicable law, judgment, order, rule or regulation of any court or governmental unit by which Seller or any Transferred Asset may be bound, (iv) will not conflict with, constitute grounds for termination of, result in a breach of or constitute a default under any agreement, instrument, license or permit to which Seller is a party or by which Seller or any Transferred Asset may be bound, and (v) will not create any claim, liability, mortgage, lien, pledge, condition, charge or encumbrance of any nature whatsoever upon any Transferred Asset. Without in any way limiting the foregoing, Seller warrants that it has complied and will continue until Closing to comply with those requirements of Washington State and local law with which a school district must comply to sell a broadcast property. Seller will (a) defend itself against any charge of noncompliance with such requirements, (b) in the event of a final decision by a competent authority that Seller has failed to comply with such requirements, will take all reasonable steps to come into compliance with such requirements, and (c) indemnify Buyer from any costs and expenses imposed on Buyer as a consequence of such noncompliance in accordance with Section 10, below.

### **3.4 FCC Licenses and Authorizations: Compliance with Law.**

Schedule 3.4 is a true and complete list of all the FCC Licenses to be transferred to Buyer hereunder upon the FCC's grant of consent to the assignment of those FCC Licenses to Buyer. Seller is the authorized lawful holder of each such FCC License, each of which is in full force and effect for the remainder of its term as set forth on Schedule 3.4. The FCC Licenses comprise all of the licenses, permits, approvals, and authorizations necessary under the Communications Act of 1934, as amended, and the FCC Rules for the operation of the Station as presently operated and conducted. None of the FCC Licenses is subject to any restriction or condition, other than those set forth on the FCC License. Except as set forth on Schedule 3.4, the Station is operating in compliance in all material respects with all terms and conditions of the FCC Licenses and FCC Rules. Except as set forth on Schedule 3.4, (a) there are no applications, investigations, complaints, objections, petitions or proceedings pending or, to Seller's knowledge, threatened before the FCC relating to the Station, nor any known basis therefore, except for proceedings of general applicability to television broadcast stations, (b) all reports, forms, applications and statements required to be filed by Seller with the FCC or required by the FCC to be maintained by Seller with respect to the Station since the dates Seller has operated the Station have been filed in a timely manner and are substantially complete and accurate, (c) the conduct of the business and operations of the Station are in compliance in all respects with the FCC's radiation standards applicable to the Station and (d) the conduct of the business and operations of the Station and the Transferred Assets are in compliance in all material respects with all applicable engineering standards required to be met under applicable FCC Rules.

### **3.5 Compliance with Laws.**

There are no governmental licenses, permits, approvals, franchises, or authorizations, other than FCC Licenses, issued by any governmental entity to be transferred to Buyer hereunder. The FCC Licenses comprise all of the licenses, permits, approvals, franchises and authorizations necessary for the conduct of the business and operations of Seller, including the operation of the Station, as presently operated and conducted. Except as set forth on Schedule 3.5, there are (a) no applications, investigations, complaints, petitions, or proceedings pending or, to Seller's knowledge, threatened by any governmental or regulatory authority other than the FCC relating to the business or operations of Seller, including operation of the Station, nor any known basis therefore, (b) all reports, forms, applications and statements required to be filed by Seller with applicable governmental or regulatory authorities, other than the FCC, have been filed and are substantially complete and accurate, and (c) the conduct of the business and operations of the Station and the Transferred Assets are in compliance in all material respects with all applicable federal, state and local laws, rules, regulations, requirements and policies other than the Communications Act and the FCC Rules.

### **3.6 Personal Property.**

Schedule 3.6 is a true and complete list of all Personal Property owned or leased by Seller that will be included in the transaction. Seller has good title to all such items of Personal Property. Except as noted on Schedule 3.6, none of the Personal Property is subject to any security interest, mortgage, pledge, lease or licensing agreement, conditional sales agreement, or other lien or encumbrance. The Personal Property is, and on the Closing Date will be, available

for and in a condition permitting immediate use by Buyer in the conduct of the business and operations of the Station in all material respects as they are now being operated and conducted, has been maintained by Seller in good operating condition and repair (ordinary wear and tear excepted), and will permit the Station to be operated by Buyer in all material respects as it is now being operated and conducted. All material items of transmitting and studio/office equipment included in the Personal Property have been maintained in a manner consistent with generally accepted standards of good engineering practice, and will permit Buyer to conduct the business and operations of the Station in compliance with the terms of the FCC Licenses and the rules and regulations of the FCC in all material respects.

### 3.7 **Assumed Contracts.**

Schedule 3.7 lists and describes all of the Assumed Contracts, accurate and complete copies of which, together with all amendments, Seller has provided to Buyer. All Assumed Contracts are in full force and effect, and are valid, binding and enforceable in accordance with their terms. There is not any material default by any party thereto or event which, after notice or lapse of time, or both, would constitute such a default such that any party would have the right to terminate any Assumed Contract. Seller is not aware of any intention by any party to any Assumed Contract (i) to terminate such contract or amend the terms thereof; (ii) to refuse to renew the same upon expiration of its term, or (iii) to renew the same upon expiration only on terms and conditions that are more onerous than those pertaining to such existing contract, where any of the foregoing would be materially adverse to Buyer. Except for any third party consents that may be required, each of which consents is listed on Schedule 3.3, Seller has full legal power and authority to assign its rights under the Assumed Contracts to Buyer in accordance with this Agreement, and such assignment will not affect the validity, enforceability and continuation of any of the Assumed Contracts. Except in the case of those Assumed Contracts that are identified as a "Material Contract" on Schedule 3.7, none of the Assumed Contracts shall be deemed material to the operation of the Station and their assignment is not a condition to the consummation of the transactions contemplated herein.

### 3.8 **Related Agreements.** Intentionally omitted.

### 3.9 **Intangible and Intellectual Property.**

(a) *Intellectual Property.* Schedule 3.9(a) sets forth a true and correct list of all Intellectual Property, and all Intellectual Property Licenses and all other licensing, franchising or other agreements, contracts or instruments relating to such Intellectual Property or under which any person is obligated to pay or has the right to receive a royalty, license fee or similar payment and which are used or useful in the operation of the Station (collectively, the "IP Agreements"). The Seller has good and marketable title to or possesses adequate licenses or other valid rights to use such Intellectual Property, free and clear of all liens and encumbrances, and has paid all maintenance fees, renewals or expenses related to such Intellectual Property. Neither the use of such Intellectual Property nor the conduct of the Station in accordance with the Seller's past practices, including but not limited to the form and content of the Seller's website, misappropriates or infringes upon any patent or copyright of any third party or, to the knowledge of the Seller, trade name, trade secret, trademark, service mark or other intellectual property right of any third party. No person has made, or, to the knowledge of the Seller, threatened to make, a claim against the

Seller alleging that Seller has violated, infringed, or otherwise improperly used any intellectual property rights.

(b) *Software.* Schedule 3.9(b) sets forth a true and complete list of: (i) all software owned by the Seller that is material to the operation of the Station (the "Seller Proprietary Software") and (ii) all software (other than Seller Proprietary Software) used by the Seller that is material to the operation of the Station (the "Seller Licensed Software" and, together with the Seller Proprietary Software, the "Seller Software"). The Seller has all right, title and interest in and to all intellectual property rights in the Seller Proprietary Software. The Seller has developed the Seller Proprietary Software through its own efforts and for its own account, and the Seller Proprietary Software is free and clear of all liens and encumbrances. The Seller has not received notice from any third party claiming any right, title or interest in the Seller Proprietary Software. The use of the Seller Proprietary Software does not breach any terms of any license or other contract between the Seller and any third party. The Seller Proprietary Software does not infringe any patent, copyright or trade secret or any other intellectual property right of any third party. The Seller is in compliance with the terms and conditions of all license and other agreements to which it is a party relating to the Seller Licensed Software. The Seller has not granted rights in Seller Software to any third party.

(c) *Domain Names.* Schedule 3.9(c) sets forth a true and complete list of all Station Domain Names. The Seller has all right, title and interest in and to all intellectual property rights in the Station Domain Names. Each of the Station Domain Names is registered in the name of the Seller and is free and clear of all liens and encumbrances. The Seller has not received notice from any third party claiming any right, title or interest in any of the Station Domain Names. The Seller is in compliance with the terms and conditions of all registration and other agreements to which it is a party relating to the Station Domain Names.

### 3.10 Transferred Assets.

The Transferred Assets, together with Buyer's rights under the Related Agreements, will permit the Station to be operated by Buyer immediately following the Closing in all material respects as it is currently being operated and conducted.

### 3.11 Insurance.

All of the Personal Property is insured against loss or damage up to at least a limit of \$6,275,452 in accordance with Washington State law and Seller's established practice, and such insurance will be maintained in effect by Seller until the Closing.

### 3.12 Claims; Legal Actions.

Except as set forth on Schedule 3.12 and except for proceedings of a general nature that may affect the television broadcast industry, there is no claim, legal action, arbitration, governmental investigation, application or rule making proceeding (individually and collectively, a "Proceeding"), in progress, pending, or, to Seller's knowledge, threatened, against or relating to Seller, the Transferred Assets, or the conduct of the business or operations of the Station, which would have a material adverse effect on Seller's ability to perform its obligations in accordance

with the terms of this Agreement or any Related Agreement, or which would render Buyer's ownership of the Transferred Assets or post-Closing operation of the Station materially more burdensome from a financial or other point of view, and Seller has no knowledge of any facts that would, or with reasonable probability, could, result in any such Proceeding.

### 3.13 **Taxes.**

Seller is not subject to taxation other than with respect to employment and sales and use taxes. It has timely filed all required tax returns in the manner prescribed by law, and all such tax returns are true, correct and complete in all material respects. Seller has properly accrued or paid to the extent such taxes have become due all taxes due from Seller. Seller has properly withheld all taxes as required. There are no liens for taxes upon the Transferred Assets. There is no dispute or claim concerning any tax liability relating to Seller either claimed or raised by any taxing authority. There are no pending tax audits or proposed tax audits of which Seller has notice.

3.14 **Financial Statements.** Attached hereto as Schedule 3.14 are internally prepared, balance sheets, income statements, and statements of cash flow for calendar years 2010, 2011, and 2012, and for the period ending February 28, 2013. The Financial Statements have been prepared from, and are in accordance with, the books and records of the Seller, and, to Seller's knowledge, fairly present in all material respects the results of operations and changes in cash flows, as the case may be, of the Station for the periods set forth therein.

3.15 **Absence of Certain Changes and Events.** Except as set forth in Schedule 3.15, since December 31, 2012, there has not occurred any material adverse change, or any event, occurrence or other development that could reasonably be expected to result in a material adverse change, in or affecting the Station or the Transferred Assets, the results of operations, cash flows, relationship with suppliers of programming, business, assets, liabilities, condition (financial or otherwise) or prospects of the Station, other than any such change, event, occurrence or development caused primarily and directly by conditions generally affecting the entire U.S. economy;

### 3.16 **Seller Benefit Plans.**

(a) The term "Seller Benefit Plan" means each Employee Benefit Plan (as defined below) that is sponsored, maintained or contributed to by the Seller, or with respect to which the Seller has any direct or indirect obligation to make contributions or with respect to which the Seller has or could incur any liability attributable to the employment of persons at or the operation of the Station. Schedule 3.16(a) sets forth a complete and correct list of each Seller Benefit Plan. Each Seller Benefit Plan identified on Schedule 3.16 that is a multiemployer plan as defined in Section 3(37) or Section 4001(a)(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), is referred to herein as a "Seller Multiemployer Plan" and each other Seller Benefit Plan identified on Schedule 3.16 is referred to herein as a "Seller Other Plan." The term "Employee Benefit Plan" means each "employee benefit plan," as such term is defined in Section 3(3) of ERISA.

(b) The Seller has performed in all material respects all obligations, whether arising by operation of any law or by contract, required to be performed by Seller in connection with the Seller Benefit Plans, and, to the knowledge of the Seller, there have been no defaults or violations by any other party to the Seller Benefit Plans. All contributions required to be made by the Seller to the Seller Benefit Plans pursuant to their terms and provisions or pursuant to applicable laws have been made timely. The Seller has not incurred, and no facts exist that could reasonably be expected to result in, any liability (direct or indirect by virtue of indemnification or otherwise) to the Seller with respect to any Seller Benefit Plan, including any liability, tax, penalty or fee under ERISA, the Code or any applicable laws (other than to pay premiums, contributions or benefits in the ordinary course);

(c) no Seller Multiemployer Plan is "insolvent," is in "reorganization," is in "endangered status," or is in "critical status" (within the meaning assigned to such terms under ERISA), and withdrawal from such plan(s) would not give rise to "withdrawal liability" under the Multiemployer Pension Plan Amendments Act of 1980, as amended; and

(d) all obligations of the Seller under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), including portability, privacy, and security obligations, with respect to any Seller Benefit Plan that is a group health plan have been timely performed.

**3.17 Labor Relations.** Schedule 3.17 sets forth a list of all collective bargaining agreements of any labor organization that currently represents any employee of the Seller at the Station (the "Labor Agreements"). Except as set forth in Schedule 3.17,

(a) The Seller has not engaged in any unfair labor practice and there is no pending or, to the Knowledge of the Seller, threatened labor board proceeding of any kind, against the Seller;

(b) No labor dispute, walk out, strike, slowdown, hand billing, picketing, work stoppage (sympathetic or otherwise), or other "concerted action" involving the employees of the Seller at the Station has occurred, is in progress or, to the Knowledge of the Seller, has been threatened; and

(c) No citation has been issued by the Occupational Safety and Health Administration ("OSHA") against the Seller with respect to the Station, and no notice of contest, claim, complaint, charge, investigation or other administrative enforcement proceeding involving the Seller has been filed or is pending or, to the Knowledge of the Seller, threatened against the Seller under OSHA or any other applicable law relating to occupational safety and health with respect to the Station.

**3.18 Disclosure.**

No representation or warranty made by Seller herein or in any Schedule hereto or any certificate or other document delivered or to be delivered by or on behalf of Seller pursuant to this Agreement contains or will contain any untrue statement of a material fact or omits or will

omit to state any material fact necessary to make any such statement contained herein or therein not misleading.

#### **SECTION 4** **REPRESENTATIONS AND WARRANTIES OF BUYER**

As an inducement to Seller to enter into this Agreement, Buyer makes the following representations and warranties to Seller, each of which is true and correct on the date hereof and shall be true as of the date of the Closing:

##### **4.1 Existence and Power.**

Buyer is a nonprofit corporation duly organized, validly existing and in good standing under the laws of the State of Washington with all requisite power under its Articles of Incorporation to enter into and perform this Agreement and the transactions contemplated hereby and to carry on its business as now conducted and as intended to be conducted after the Closing, including its ownership of the Transferred Assets and operation of the Station. On the Closing Date, Buyer will be qualified to do business and in good standing in the State of Washington.

##### **4.2 Authorization and Binding Obligation.**

The execution, delivery, and performance by Buyer of this Agreement and each Related Agreement to which Buyer is or shall be a party, and the consummation by Buyer of the transactions contemplated hereby and thereby, have been duly authorized by all necessary corporate action. This Agreement and each Related Agreement to which Buyer is or shall be a party has been, or at the Closing will be, duly executed and delivered by Buyer. This Agreement constitutes, and on the Closing Date, each Related Agreement to which Buyer shall be a party, will constitute, the legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting the rights of creditors generally or by general principles of equity.

##### **4.3 Absence of Conflicting Agreements.**

Subject to obtaining FCC Consent and any required third party consents to the assignment by Seller to Buyer of the Assumed Contracts, the execution, delivery, and performance by Buyer of this Agreement and the Related Agreements (with or without the giving of notice, the lapse of time, or both) (i) do not require the consent of any third party; (ii) will not conflict with, result in a breach of, or constitute a default under, any applicable law, judgment, order, rule or regulation of any court or governmental unit to which Buyer is a party or by which Buyer is bound; 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 Buyer is a party or by which Buyer may be bound, such that Buyer could not acquire the Transferred Assets and be the licensee of the Station.

#### 4.4 **Eligibility of Buyer.**

Buyer is legally, financially, and technically qualified to be the assignee of the FCC Licenses and the owner and operator of the Station under the Communications Act of 1934, as amended, and the FCC Rules, including, but not limited to, eligibility to hold a noncommercial educational license under Section 73.621 of those rules.

#### 4.5 **Litigation.**

There is no outstanding judgment, award, decree, writ or litigation, action, suit, investigation or other proceeding pending or, to Buyer's knowledge, threatened, which would have a material adverse effect on Buyer's ability to perform its obligations in accordance with the terms of this Agreement or any Related Agreement and Buyer has no knowledge of any facts that would result in any such proceeding.

#### 4.6 **Disclosure.**

No representation or warranty made by Buyer herein or in any Schedule hereto or any certificate or other document delivered or to be delivered by or on behalf of Buyer pursuant to this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make any such statement contained herein or therein not misleading.

### **SECTION 5 COVENANTS OF SELLER AND BUYER**

#### 5.1 **Pre-Closing Covenants of Seller.**

Except as expressly authorized by this Agreement or with the prior written consent of Buyer which consent shall not be unreasonably withheld (except as provided in Section 5.1(i), below), between the date hereof and the Closing, Seller shall:

- (a) operate the Station and conduct its other activities in the ordinary course of business, consistent with and in accordance with its past practices and consistent with its representations and warranties set forth in this Agreement;
- (b) operate the Station in compliance in all material respects with the FCC Licenses and the FCC Rules, including but not limited to the timely filing of all reports, notices, applications, and the maintenance of records as may be required under those Rules;
- (c) operate the Station in compliance in all material respects with all other laws, regulations, rules and orders applicable to the Station and the Transferred Assets;

- (d) not sell, convey, mortgage, encumber or otherwise dispose of any of the Transferred Assets except for the retirement of items of Personal Property in the ordinary course of business as permitted under Section 1.1(b) hereof, provided that such items are replaced by items of like kind or quality;
- (e) maintain, repair and replace the Personal Property consistent with its existing practices and operations, and maintain self-insurance on the Transferred Assets consistent with the past practices of Seller;
- (f) permit Buyer and its representatives and agents to have reasonable access to the Station and the Transferred Assets, provided that such access does not disrupt the normal operations of Seller;
- (g) promptly notify Buyer in the event there is any material damage to the Transferred Assets or interruption to the normal broadcast operations of the Station in excess of eighteen continuous hours at any one time or thirty-six hours over seven consecutive days;
- (h) promptly notify Buyer in writing if it determines, or has reasonable grounds to believe, that any representation or warranty of Seller or of Buyer is no longer accurate in all material respects, or that any covenant of Seller or of Buyer has been breached;
- (i) not enter into any new agreements that would be binding on Buyer after the Closing without the written consent of Buyer, to be granted or withheld in Buyer's sole discretion;
- (j) not terminate or materially amend or modify, or assign any rights relating to any Assumed Contract;
- (k) not create or assume any liens, encumbrances, or security interests affecting any of the Transferred Assets;
- (l) use its commercially reasonable efforts to obtain any third party consents necessary for the assignment of any Assumed Contract;
- (m) cooperate with Buyer in timely filing such applications and other material as may be required to obtain FCC Consent to the assignment of the FCC Licenses to Buyer, including, but not limited to, providing the FCC with such information as it may reasonably request, assisting Buyer in providing such information, where appropriate, and generally using commercially reasonable efforts to obtain the prompt and timely FCC Consent.

## 5.2 Pre-Closing Covenants of Buyer.

Except as expressly authorized by this Agreement or with the prior written consent of Seller, which consent shall not be unreasonably withheld, between the date hereof and the Closing, Buyer shall:

- (a) take no action that would reasonably be expected to impair its qualifications to be the licensee of the Station, materially delay obtaining the FCC Consent, result in its disqualification under the rules of the FCC to be the licensee of the Station, or that would require it to obtain a waiver of the FCC Rules in order to obtain the FCC Consent;
- (b) promptly notify Seller in writing if it determines, or has reasonable grounds to believe, that any representation or warranty of Buyer or of Seller is no longer accurate in all material respects, or that any covenant of Buyer or of Seller has been breached;
- (c) use its commercially reasonable efforts to cooperate with Seller to obtain any third party consents necessary for the assignment of any Assumed Contract; and
- (d) cooperate with Seller in timely filing such applications and other material as may be required to obtain FCC Consent to the assignment of the FCC Licenses to Buyer, including, but not limited to, providing the FCC with such information as it may reasonably request, assisting Seller in providing such information, where appropriate, and generally using commercially reasonable efforts to obtain the prompt and timely FCC Consent.

## 5.3 Post-Closing Covenants.

After the Closing, Seller and Buyer will take such actions, and execute and deliver to Buyer or Seller, respectively, such further bills of sale, assignments or other transfer or assumption documents as may be necessary to ensure the full and effective transfer of title to the Transferred Assets to Buyer or the assumption of the Assumed Liabilities by Buyer pursuant to this Agreement.

- (a) In furtherance and not in limitation of the preceding provisions of this Section 5.3, following the Closing, the Buyer shall revise the KSPS website ([www.KSPS.org](http://www.KSPS.org)), as necessary, to reflect Buyer's purchase of assets from Seller pursuant to this Agreement.

## 5.4 Third-Party Consents.

Provided that Buyer has cooperated with Seller to obtain any required third-party consents, if any required third-party consent is not obtained by the Closing with respect to the transfer to Buyer of any contract or agreement that is not a Material Contract but that is intended to be included in the Transferred Assets, (i) title to such contracts and agreements shall be retained by Seller and not transferred to Buyer at the Closing; and (ii) Seller will cooperate with Buyer in any reasonable arrangement designed to provide to Buyer as of the Closing the rights

and benefits under such contracts and agreements and for Buyer to assume the obligations thereunder.

## **SECTION 6**

### **SPECIAL COVENANTS AND AGREEMENTS**

#### **6.1 FCC Consent.**

The assignment of the FCC Licenses as contemplated by this Agreement is subject to the prior consent and approval of the FCC (the "FCC Consent"). Within ten (10) business days of the date of this Agreement, Buyer and Seller shall file with the FCC an appropriate application for the FCC Consent (the "Assignment Application"), provided, however, that the failure to meet that filing deadline shall not constitute a material breach of this Agreement if the party is exercising commercially reasonable efforts to file the Assignment Application. The parties shall prosecute the Assignment Application with all reasonable diligence and use commercially reasonable efforts to obtain the grant of the Assignment Application expeditiously. Each party hereto shall defend against any petition to deny or informal objection filed with respect to the Assignment Application, with each party responding independently to any allegations directed against its qualifications. Each party shall pay its own attorneys' fees and other costs incurred in filing and prosecuting the Assignment Application, including, without limitation, any attorneys' fees and costs incurred in preparing and filing any submissions in response to any petition to deny or informal objection. The transfer of the Transferred Assets hereunder is expressly conditioned upon the grant of the FCC Consent without the imposition of any condition that is materially adverse to Buyer or Seller, and compliance by the parties with any conditions imposed by the FCC Consent that are not materially adverse to the parties.

#### **6.2 Expenses: Taxes.**

- (a) Except as provided for in this Section 6.2, each party shall be solely responsible for all expenses incurred by it in the negotiation and closing of this Agreement and any Related Agreement. Buyer shall pay all personal property sales and transfer taxes incurred in connection with the transactions contemplated hereby.
- (b) Notwithstanding anything in this Agreement to the contrary, Seller shall pay any and all taxes attributable to the conduct of the business and operations of Seller for all taxable years (or portions thereof) ending before the Closing Date.

#### **6.3 Risk of Loss.**

- (a) The risk of any loss, damage or impairment, confiscation, or condemnation (a "Loss") of any of the Transferred Assets from any cause whatsoever shall be borne by Seller at all times prior to the Closing. In the event of any such Loss, the proceeds of any claim for Loss payable under any insurance policy, judgment or award with respect thereto shall be applied to repair, replace or restore such Transferred Assets to their prior condition as soon as

possible after such Loss. Except as otherwise provided in Section 10, the risk of any Loss of any of the Transferred Assets from any cause whatsoever shall be borne by Buyer at all times from and after the Closing.

- (b) In the event of any damage or destruction of the Transferred Assets which prevents signal transmission by the Station in the normal and usual manner and Seller cannot or does not restore or replace the Transferred Assets before the Closing so that the Station is operating on the date of Closing in accordance with good engineering standards and the terms of its FCC Licenses, using equipment and facilities comparable to those in place at the date this Agreement is executed, Buyer may, at its option and in its sole discretion, either (i) proceed to close this Agreement and complete the restoration and replacement of such damaged Transferred Assets after the Closing, in which event Seller's only obligation to Buyer shall be (x) to indemnify Buyer against the actual and reasonable cost of such restoration and replacement up to the Loss Payable limit of the Seller's self-insurance policy and (y) to deliver to Buyer all insurance proceeds received which are related to the Transferred Assets and arising from the event causing such damage or destruction; (ii) terminate this Agreement in writing, provided, that if Buyer elects to terminate this Agreement pursuant to this clause (b)(ii), it must give Seller written notice of such termination within thirty (30) days of its receipt of notice of damage or destruction of the Transferred Assets that provides Buyer with a reasonable basis to assess the extent of the damage and the prospects for repair and restoration or (iii) postpone the Closing up to 60 days in order to permit the Seller to effect the needed restoration and replacement. In the event Buyer elects to terminate this Agreement pursuant to this paragraph, neither party shall have any further liability to the other with respect to this Agreement.

#### 6.4 No Brokers.

Seller and Buyer each represents that it has not engaged any third party to act as a finder, broker, agent, consultant, or in a similar capacity in connection with this Agreement and the transactions contemplated hereby. Seller and Buyer each agrees to indemnify and hold harmless the other with respect to any claim for a finder's, consultant's, broker's, or similar commission or fee made by any third party on the basis of its alleged conduct.

### SECTION 7

#### CONDITIONS TO OBLIGATIONS OF BUYER AND SELLER

##### 7.1 Conditions of Obligations of Buyer to Close.

All obligations of Buyer at the Closing hereunder are subject to the fulfillment prior to and at the Closing of each of the following conditions, any of which may be waived by Buyer in writing at or prior to the Closing:

- (a) **Representations and Warranties.** The representations and warranties of Seller shall be true and complete in all material respects at and as of the Closing Date as though such representations and warranties were made at and as of such date.
- (b) **Covenants and Conditions.** Seller shall have in all material respects performed and complied with the covenants, agreements, and conditions required by this Agreement to be performed or complied with by it prior to or on the Closing Date.
- (c) **Licenses.** Seller shall be the holder of the FCC Licenses and there shall not have been any modification of any such license that has a material adverse effect on the Station or the business or operations of the Station.
- (d) **FCC Consent.** The FCC Consent has been obtained and has become Final (as that term is defined in Section 8.1), provided that Buyer may waive the requirement of Final FCC Consent, in its discretion, if no petition to deny or informal objection was filed against the FCC Consent.
- (e) **Third Party Consents.** Subject to section 5.4, all Material Contracts (as defined in Section 3.7 and identified on Schedule 3.7) shall be in full force and effect on the Closing Date. Seller shall have obtained and shall have delivered to Buyer any required third-party consents to the assignment of the Material Contracts.
- (f) **Adverse Proceedings.** No action, suit, claim or governmental proceeding shall be pending against, and no order, decree or judgment of any court, agency or other governmental authority shall have been rendered against, Seller or Buyer that: (i) renders it unlawful, as of the Closing Date, to effect the transactions contemplated by this Agreement in accordance with its terms; (ii) declares invalid or illegal the transactions contemplated hereby; (iii) enjoins the closing of the transactions contemplated hereby; (iv) awards material damages on account of the consummation of any transaction contemplated hereby; or (v) is a petition of bankruptcy by or against Seller, an assignment by Seller for the benefit of its creditors, or other similar proceeding.
- (g) **Related Agreements.** Seller and Buyer shall have executed and delivered coincident with the Closing the following Agreements (each a “Related Agreement” and, collectively, the “Related Agreements”):
  - (1) a Lease Agreement for the lease of certain real property from Seller as Lessor to Buyer, as set forth in Schedule 7.1(g)(1);
  - (2) an Agreement for Programming Services, as set forth in Schedule 7.1(g)(2);

- (3) an Educational Cooperative Agreement, as set forth in Schedule 7.1(g)(3);
- (4) a Purchase and Sale Agreement attached as Schedule 7.1(g)(4).
- (5) Deeds and a Real Estate Purchase and Sale Agreement acceptable to the parties transferring the real property and improvements thereon described at Section 1.1(f) (the "Real Estate Transfer Documents").
- (h) **Deliveries.** Seller shall have made or stand willing and able to make all the deliveries to Buyer set forth in Section 8.2.
- (i) **Possession And Use At Closing.** Buyer shall be satisfied that, upon Closing Buyer shall have possession and use of the Transferred Assets so as to own and operate the Station in the same geographic area in the U.S. and Canada and in substantially the same manner as operated by Seller prior to Closing, subject only to Assumed Liabilities and the ongoing post-Closing regulatory authority of the Federal Communications Commission.

#### 7.2 **Conditions of Obligations of Seller to Close.**

All obligations of Seller at the Closing hereunder are subject to the fulfillment prior to and at the Closing of each of the following conditions, any of which may be waived by Seller in writing at or prior to the Closing:

- (a) **Representations and Warranties.** The representations and warranties of Buyer shall be true and complete in all material respects at and as of the Closing Date as though such representations and warranties were made at and as of such date.
- (b) **Covenants and Conditions.** Buyer shall have in all material respects performed and complied with the covenants, agreements, and conditions required by this Agreement to be performed or complied with by it prior to or on the Closing Date.
- (c) **Adverse Proceedings.** No action, suit, claim or governmental proceeding shall be pending against, and no order, decree or judgment of any court, agency or other governmental authority shall have been rendered against, Seller or Buyer that: (i) renders it unlawful, as of the Closing Date, to effect the transactions contemplated by this Agreement in accordance with its terms; (ii) declares invalid or illegal the transactions contemplated hereby; (iii) enjoins the closing of the transactions contemplated hereby; (iv) awards material damages on account of the consummation of any transaction contemplated hereby; or (v) is a petition of bankruptcy by or against Buyer, an assignment by Buyer for the benefit of its creditors, or other similar proceeding.

- (d) **Related Agreements.** Seller and Buyer shall have executed and delivered the Related Agreements coincident with the Closing.
- (e) **Deliveries.** Buyer shall have made or stand willing and able to make all the deliveries set forth in Section 8.3.

## **SECTION 8** **CLOSING AND CLOSING DELIVERIES**

### **8.1 Closing.**

Upon the terms and subject to the conditions set forth in this Agreement, this Agreement shall be consummated by Buyer and Seller (the "Closing") to occur at 10:00 am Pacific Time at the offices of the Station, unless another mutually agreeable location is chosen, within ten (10) business days following the date upon which the FCC Consent becomes Final or within twenty (20) business days following the date that Buyer waives the Final FCC Consent requirement, whichever occurs first (the "Closing Date"). As used in this Agreement, the FCC Consent shall have become "Final" when that action, by lapse of time or otherwise, is no longer subject to administrative or judicial reconsideration, review, rescission, appeal or stay. Closing shall be effective as of 12:01 a.m. Pacific Time on the Closing Date, unless the parties agree on a different time.

### **8.2 Deliveries by Seller.**

Prior to or at the Closing, Seller shall deliver to Buyer the following, in form and substance reasonably satisfactory to Buyer and its counsel:

- (a) **Transfer Documents.** Duly executed bills of sale, assignments, and other transfer documents including, without limitation, an "Assignment and Assumption of FCC Licenses" evidencing the assignment by Seller and the assumption by Buyer of the FCC Licenses, which shall be sufficient to vest good and marketable title or right to the Transferred Assets in the name of Buyer free and clear of any claims, liabilities, liens, pledges, conditions, charges, or encumbrances of any nature whatsoever, except for any taxes not yet due and payable, none of which individually or collectively impair the use and operations of the Station as presently operated;
- (b) **Officer's Certificate.** A certificate, dated as of the Closing Date and executed by a duly authorized official of Seller, certifying (i) that the representations and warranties of Seller are true and complete in all material respects as of the Closing Date as though made on and as of that date, (ii) that Seller has, in all material respects, performed its obligations and complied with its covenants set forth in this Agreement to be performed and complied with by it prior to or on the Closing Date, and (iii) that Seller possesses all necessary governmental authority to execute this Agreement, the Related Agreements, and the closing documents contemplated herein;

- (c) **Board Resolutions.** Certified resolutions of Seller's Board of Trustees approving the execution, delivery, and performance of this Agreement and the Related Agreements and the consummation of the transactions contemplated herein and therein, and the delivery of the closing documents provided for hereunder;
- (e) **Third-Party Consents.** Subject to section 5.4, all third-party consents to the assignment of the Material Contracts and an estoppel certificate from the owner of the Station's transmission Tower site;
- (f) **Related Agreements.** The Related Agreements;
- (g) **Net Amount Owed.** Any net amount which Seller owes Buyer pursuant to the provisions of Section 2.1(b); and
- (h) **Other Documents.** All other documents, instruments, and writings required to be delivered by Seller at or prior to the Closing pursuant to this Agreement.

### 8.3 **Deliveries by Buyer.**

Prior to or at the Closing, Buyer shall deliver to Seller the following, in form and substance reasonably satisfactory to Seller and its counsel:

- (a) **Purchase Price.** The Purchase Price in accordance with Section 2.1, payable as described in Section 2.1(b), above.
- (b) **Assumption Agreements.** Appropriate assumption agreements pursuant to which Buyer shall assume and undertake to perform Seller's obligations under the FCC Licenses and all other governmental licenses and authorizations and the Assumed Contracts;
- (c) **Officer's Certificate.** A certificate, dated as of the Closing Date and executed by a duly authorized officer of Buyer, certifying (i) that the representations and warranties of Buyer are true and complete in all material respects as of the Closing Date as though made on and as of that date, (ii) that Buyer has, in all material respects, performed its obligations and complied with its covenants set forth in this Agreement to be performed and complied with by it prior to or on the Closing Date, and (iii) that Buyer possesses all necessary corporate authority to execute this Agreement, the Related Agreements, and the closing documents contemplated herein;
- (d) **Governing Entity Resolutions.** Certified resolutions of Buyer approving the execution, delivery, and performance of this Agreement and the Related Agreements and the consummation of the transactions contemplated herein and therein, and the delivery of the closing documents provided for hereunder;

- (d) **Good Standing Certificate.** A certificate of good standing from the Secretary of the State of Washington dated not more than fifteen (15) days prior to the Closing certifying that Buyer is in good standing;
- (e) **Related Agreements;** The Related Agreements; and
- (f) **Other Documents.** All other documents, instruments and writings required to be delivered by Buyer at or prior to the Closing pursuant to this Agreement.

## **SECTION 9** **TERMINATION**

### **9.1 Termination Rights.**

This Agreement may be terminated by written notice to the other party upon the occurrence of any of the following events or conditions, provided that the terminating party is not then in breach of any material provision of this Agreement:

- (a) by either Seller or Buyer, if there shall be in effect on the Closing Date any judgment, decree, or order that would prevent or make unlawful the Closing of this Agreement or if such Closing shall not have occurred by December 31, 2013;
- (b) by either Seller or Buyer, if the Assignment Application shall be set for hearing by the FCC for any reason;
- (c) by either Seller or Buyer, if the FCC Consent has not been issued within nine (9) months following the date the Assignment Application has been accepted for filing by the FCC;
- (d) by Buyer, pursuant to Section 6.3 (Risk of Loss);
- (e) by Buyer, if Seller is in material breach of its obligations and fails to cure such material breach within thirty (30) days of receipt of written notice from Buyer of the substance of Seller's material breach;
- (f) by Seller, if Buyer is in material breach of its obligations and fails to cure such material breach within thirty (30) days of receipt of written notice from Seller of the substance of Buyer's material breach; or
- (g) by either Seller or Buyer upon five (5) business days' prior written notice, if the other party defaults in its obligation to complete the Closing and the default is not cured within that period.

### **9.2 Rights Upon Termination.**

Upon termination:

- (a) if neither party hereto is in breach of any material provision of this Agreement, the parties hereto shall not have any further liability; or
- (b) if this Agreement is terminated because Buyer is in breach of any material provision of this Agreement and has failed to cure such breach in a timely fashion, Seller shall be entitled, as its sole and exclusive remedy, to recover from Buyer the expenses (including reasonable attorney's fees) actually incurred by Seller in connection with the negotiation, preparation and performance of this Agreement and Buyer's breach, but not to exceed Fifty Thousand Dollars (\$50,000),
- (c) if this Agreement is terminated because Seller is in breach of any material provision of this Agreement and has failed to cure such breach in a timely fashion, Buyer shall be entitled, as its sole and exclusive remedy (except as otherwise provided in Section 9.3), to recover from Seller the expenses (including reasonable attorney's fees) actually incurred by Buyer in connection with the negotiation, preparation and performance of this Agreement and Seller's breach, but not to exceed Fifty Thousand Dollars (\$50,000).

9.3 **Specific Performance.**

Notwithstanding the provisions of Sections 9.1 and 9.2, if Seller is in material default or breach of any material provision of this Agreement, Buyer shall have the right, in its absolute and sole discretion, to obtain specific performance of this Agreement. The parties hereby stipulate that the Transferred Assets and FCC Licenses are distinct and unique assets that cannot be replicated and that damages would be an inadequate remedy in the event of Seller's breach. Accordingly, Buyer shall be entitled, as a matter of right, upon notice to Seller, to seek specific performance of this Agreement, subject to such equitable adjustments as the Court may impose.

**SECTION 10**  
**INDEMNIFICATION**

10.1 **Buyer's Right to Indemnification.**

Seller shall indemnify and hold harmless Buyer and its officers, directors, members, employees, agents, successors, and permitted assigns from and against and in respect of, and to reimburse them for, any and all losses, costs, liabilities, claims, obligations, and expenses, including reasonable attorneys' fees and expenses (together, "Claims"), incurred or suffered by any party arising from:

- (a) the operation of the Station or ownership of the Transferred Assets prior to the Closing;
- (b) any breach, misrepresentation, or other violation of or failure to perform any of Seller's covenants, agreements, warranties, or representations, contained in this Agreement or any Related Agreement;

- (c) all obligations and liabilities of Seller arising under the FCC Licenses, any of the Assumed Contracts, or any of the other Transferred Assets prior to the Closing; and
- (d) all Retained Liabilities, including but not limited to all accounts payable for the operation of the Station between the date hereof and the day preceding the date of Closing, any contracts, agreements, leases and understandings that are not Assumed Contracts, and any liability under an Assumed Contract which accrues prior to Closing.

**10.2 Seller's Right to Indemnification.**

Buyer shall indemnify and hold harmless Seller and its Trustees, officers, employees, agents, successors, and permitted assigns from and against and in respect of, and to reimburse them for, any and all Claims incurred or suffered by such parties arising from:

- (a) the operation of the Station or ownership of the Transferred Assets by Buyer on or after the Closing,
- (b) a breach, misrepresentation, or other violation of or failure to perform any of Buyer's covenants, agreements, warranties, or representations contained in this Agreement or any Related Agreement; and
- (c) all obligations and liabilities of Buyer arising under the FCC Licenses, any of the Assumed Contracts, or any of the other Transferred Assets accruing on or after the Closing.

**10.3 Survival of Representations and Warranties.**

The representations and warranties of the parties contained herein, and the parties' respective indemnification rights pursuant to this Section 10 with respect thereto, shall expire on the date that is twenty four (24) months after the Closing, except for the Seller's obligations pursuant to Section 6.3(b) hereof.

**SECTION 11  
DISPUTE RESOLUTION**

**11.1 Disputes.**

The parties shall attempt in good faith to resolve any dispute, controversy or claim between them arising out of or relating to this Agreement, including without limitation any dispute over the breach, termination, interpretation, or validity thereof (the "Dispute"). Either party may request through written notice that the Dispute be referred to senior executives of the parties who have authority to resolve the Dispute. The executives shall attempt to resolve the Dispute by agreement within sixty (60) days of such notice.

11.2 **Failure to Resolve a Dispute.**

In the event the senior executives of the parties are not able to resolve the Dispute within sixty (60) days of such notice, as provided in Section 11.1, either party may seek judicial relief without any further notice to the other, provided, however, that the action shall be brought in the courts of the State of Washington with venue lying in the City and County of Spokane.

**SECTION 12**  
**MISCELLANEOUS**

12.1 **Governing Law.**

This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Washington.

12.2 **Construction.**

The headings herein are included for ease of reference only and shall not control or affect the meaning or construction of the provisions of this Agreement.

12.3 **Entire Agreement.**

This Agreement, all Schedules hereto, and all documents and certificates to be delivered by the parties pursuant hereto collectively represent the entire understanding and agreement between Buyer and Seller with respect to the subject matter hereof. All Schedules referenced in and attached to this Agreement and all documents referenced in the Agreement as previously delivered to either party shall be deemed part of this Agreement and incorporated herein, where applicable, as if fully set forth herein. This Agreement supersedes all prior negotiations, agreements, and understandings between Buyer and Seller. This Agreement cannot be amended except by an agreement in writing which 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 is sought.

12.4 **Assignment.**

Buyer and Seller shall not assign their interests or delegate their obligations under this Agreement without the prior written consent of the other party in its sole discretion, provided that Buyer may assign its rights and delegate its obligations hereunder to an entity which is controlling, controlled by, or under common control with Buyer on condition that such assignment will not delay receiving the FCC Consent or the Closing. This Agreement shall be binding upon the successors and permitted assigns of the parties hereto.

12.5 **Notice.**

All notices, demands and requests required or permitted to be given under the provisions of this Agreement shall be (i) in writing, (ii) delivered by personal delivery, sent by commercial delivery service or registered or certified mail, return receipt requested, (iii) deemed to have been

given on the date of personal delivery, or the date set forth in the records of the delivery service, or on the return receipt, whichever shall first occur, and (iv) addressed as follows:

To Seller: Spokane School District No. 81  
ATTN: Superintendent  
200 North Bernard Street  
Spokane, WA 99201-0282

with copies to: Paul Clay  
Stevens Clay Manix  
421 W. Riverside, Suite 1575  
Spokane, WA 99201-0402

and

John Crigler  
Garvey Schubert Barer  
Fifth Floor  
1000 Potomac Street, N.W.  
Washington, D.C. 20007

To Buyer: FRIENDS OF KSPS  
ATTN: Executive Director  
3911 South Regal Street  
Spokane, WA 99223

with copy to: Donald K. Querna  
Randall | Danskin, P.S.  
601 W. Riverside, Suite 1500  
Spokane, WA 99201

and

Margaret L. Miller  
DowLohnes, PLLC  
1200 New Hampshire Avenue, NW; Suite 800  
Washington, DC 20036-6802

or to such other persons and addresses as the parties may from time to time designate in a writing to the other party delivered in accordance with this Section 12.5.

#### 12.6 Waiver.

Either party may, at its election, waive in writing any or all of the conditions contained herein to which its obligations are subject. Waiver by either party hereto of any breach of or exercise of any right under this Agreement shall not be deemed a waiver of similar or other breaches or rights. The failure of a party to take any action by reason of any such breach, or to

exercise any such right, shall not deprive such party of the right to take action at any time while such breach or condition giving rise to such right continues or in connection with any subsequent breach.

**12.7 No Third Party Beneficiary.**

Nothing in this Agreement is intended to confer upon any person other than the parties hereto and their respective successors and permitted assigns any rights or remedies under or by reason of this Agreement.

**12.8 Severability.**

Whenever possible, each provision hereof shall be interpreted so as to be effective and valid under applicable law. If, however, any provision contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision shall be ineffective to the extent, but only to the extent, of such invalidity, illegality, or unenforceability, and the remainder of this Agreement shall continue in effect and the parties shall endeavor to implement this Agreement so as to achieve the goals set forth herein.

**12.9 Counterparts Execution.**

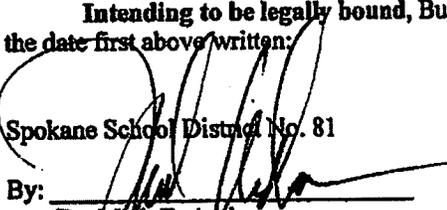
This Agreement may be signed in counterparts with the same effect as if the signature on each such counterpart were upon the same instrument. This Agreement shall not be deemed executed unless and until signed by both parties. A pdf or other electronic copy of an executed Agreement, or a facsimile copy thereof, shall be deemed to be the legal equivalent of an executed original, and the parties may Close the purchase and sale transaction described herein remotely using either or both of such technologies.

**12.10 Publicity.**

Except as may be required by applicable law, no press release or public announcements shall be made relative to this Agreement or the transactions contemplated hereby without the prior agreement of the parties hereto.

Intending to be legally bound, Buyer and Seller hereby execute this Agreement as of the date first above written:

Spokane School District No. 81

By:   
Dr. Mark E. Anderson  
Associate Superintendent  
School Support Services  
Spokane Public Schools

Friends of KSPS

By:   
Gary A. Stokes  
Executive Director

## **SCHEDULES**

- A TV Translator Stations
- 3.3 Required Consents
- 3.4 FCC Licenses
- 3.6 Personal Property
- 3.7 Assumed Contracts
- 3.9(a) Intellectual Property
- 3.9(b) Software
- 3.9(c) Station Domain Names
- 3.12 Claims; Litigation
- 3.14 Internal Financial Statements
- 3.15 Absence of Certain Changes and Events
- 3.16 Seller Benefit Plans
- 3.18 Collective Bargaining Agreements and Labor Relations
- 7.1(g)(1) Lease Agreement
- 7.1(g)(2) Programming Services Agreement
- 7.1(g)(3) Educational Cooperative Agreement
- 7.1(g)(4) Purchase and Sale Agreement

## **SCHEDULES TO KSPS APA**

## **Schedule A – TV Translator Stations**

### TV Translator Stations:

K07JO-D, Chelan Butte, Washington  
K26LJ-D, Coeur D'Alene, Idaho  
K32EU, Missoula, Montana <sup>1</sup>  
K49LX-D, Sandpoint, Idaho  
K46LI-D, Baker Flats Area, Washington  
K24JN-D, Lewiston, Idaho

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<sup>1</sup> The FCC granted Special Temporary Authority (File Number BSTA-20120730AEG, as extended by BESTA-20130115AAC) for K32EU to operate digitally on Channel 8 at Missoula, MT, using the temporary call sign K08PR-D. The STA expires August 2, 2013. Spokane School District #81 has pending an application (File No. BDCCDTV-20120523ADY for authority to operate on Channel 8 at Missoula, MT), and Seller will assign to Buyer its interest in this application.

### **Schedule 3.4 – FCC Licenses**

#### Main Transmitter License:

KSPS-TV, Spokane, Washington  
Antenna Structure Registration Number 1042236

#### TV Translator Stations:<sup>2</sup>

K07JO-D, Chelan Butte, Washington  
K26LJ-D, Coeur D'Alene, Idaho  
K32EU, Missoula, Montana<sup>3</sup>  
K49LX-D, Sandpoint, Idaho  
K46LI-D, Baker Flats Area, Washington  
K24JN-D, Lewiston, Idaho

#### Auxiliary Broadcast Stations:

KVR52 (Studio Transmitter Link)  
WAQ349 (Studio Transmitter Link)  
WBS339 (Intercity Relay)  
WHA946 (Intercity Relay)  
WHA952 (Intercity Relay)  
WHA953 (Intercity Relay)  
WLJ365 (Intercity Relay)  
WLJ418 (Intercity Relay)  
WLJ422 (Intercity Relay)  
WLJ435 (Intercity Relay)  
WMW673 (Intercity Relay)  
WPTS320 (Intercity Relay)  
WPWG984 (Intercity Relay)  
WQOZ535 (Intercity Relay)  
WPWD463 (Microwave Public Safety Pool)  
WPWD490 (Microwave Public Safety Pool)

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<sup>2</sup> On August 26, 2010, the FCC granted an application (File Number BALTTV-20100715AJC) for consent to the assignment from T.V. Reception Improvement District to Spokane School District #81 for the license used in connection with the operation of K17EV-D, Omak, Washington. That grant was not consummated.

<sup>3</sup> The FCC granted Special Temporary Authority (File Number BSTA-20120730AEG, as extended by BESTA-20130115AAC) for K32EU to operate digitally on Channel 8 at Missoula, MT, using the temporary call sign K08PR-D. The STA expires August 2, 2013. Spokane School District #81 has pending an application (File No. BDCCDTV-20120523ADY for authority to operate on Channel 8 at Missoula, MT), and Seller will assign to Buyer its interest in this application.

**SCHEDULE 7.1(g)(1)**

## LEASE AGREEMENT

This Lease Agreement is entered into this 15 day of September, 2013, to be effective as described below, by and between Spokane School District No. 81, a Washington state municipal corporation ("LESSOR"), and FRIENDS OF KSPS, a Washington state nonprofit corporation ("LESSEE"), the current co-occupant of the Facility.

### AGREEMENT

In consideration of the programming services described in the **Programming and Other Services Agreement** attached as **Exhibit "A"** (the "Programming Agreement"), and the other consideration described herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. PREMISES:** LESSOR leases to LESSEE and LESSEE leases from LESSOR the improvements known as the KSPS building located at 3911 South Regal Street, in Spokane, Washington, 99223, consisting of approximately 26,683 square feet, and described on **Exhibit "B"** which is incorporated into and made a part of this lease ("Premises").
- 2. TERM AND OPTIONS TO RENEW:** Subject to Sections 4 and 46, below, the term of this lease shall commence on September 1, 2013 and shall continue until August 31, 2018, unless terminated earlier by mutual agreement. Subject to Sections 4 and 46, below, if LESSEE is not at the time of renewal in default of its obligations under this Lease, LESSEE shall have four (4) options to renew, each for a period of five (5) years, and each commencing immediately upon expiration of the preceding term, upon the same terms and conditions as are set forth herein, other than rent and these options to renew. Unless LESSEE gives the LESSOR notice that LESSEE does not intend to exercise an option to renew, LESSEE shall be deemed to have exercised such option to renew.
- 3. RENT:** As rent for the original term of this Lease, in addition to any other obligations imposed on LESSEE in this Lease, LESSEE shall provide the programming services described in the Programming Agreement. If, within the original term of this Lease, the Programming Agreement is terminated, then the rent shall be two hundred twenty two thousand dollars (\$222,000.00) per year in cash or in kind. After August 31, 2018, the rent, which may be paid either in cash or in kind as the parties shall agree, shall be determined by mutual agreement, and if the parties are unable to agree, shall be fair market rent as determined by a commercial leasing agent selected by mutual agreement of the parties, based upon the LESSEE's then-current use of the Premises. If cash rent is due hereunder after August 31, 2018, unless LESSEE was paying cash rent prior to that date: (i) because the parties in this Agreement anticipate an exchange of rent for services, and because it will take time for the LESSEE to adjust its operations to accommodate the provision of materially fewer services and the payment of higher cash expenses to change to such cash rent, the first twelve (12) calendar months following the change to cash rent shall be rent free; and (ii) thereafter, such rent shall be paid in lawful money of the United States of America on September 1 of each year (excluding the year immediately following conversion to cash rent), in arrears. The parties shall determine, on or by November 30, 2017 whether the rent for the next succeeding five (5) year renewal period (if it should become effective) shall be in cash to be determined according to the foregoing. This process shall be repeated on or by November 30 during the fifth year of any renewal period with respect to the rent for the upcoming renewal period (should said upcoming renewal period become effective).

**4. RECAPTURE/EARLY TERMINATION:** As more fully described in Section 46, below, LESSOR shall be entitled to recapture the Premises and terminate this lease should LESSOR determine that the Premises are needed for any school district purposes.

**5. CONDITION:** LESSEE acknowledges that it has completely examined the Premises, including inspection for obvious and latent conditions, and, subject to the warranties and representations set forth in the Asset Purchase Agreement, it has found the Premises are in all respects suitable for the permitted uses described herein. LESSEE acknowledges that, except as set forth in the Asset Purchase Agreement, LESSOR has made no representations whatsoever as to the suitability of the Premises for LESSEE'S intended, foreseeable, and permitted uses, and, except as expressly provided herein and therein, LESSOR has no obligation to make any repairs, additions, or improvements thereto and expressly disclaims any warranty that the Premises are suitable for the permitted uses. It is expressly understood by the parties that, except as aforesaid, the Premises are leased on an "AS IS" basis.

**6. USE:** LESSEE shall use the Premises for the following purposes and no others without prior written consent of LESSOR:

Public Television Broadcasting Station

In the event LESSEE'S use is not used for the above purposes then the LESSOR, at LESSOR'S sole option, shall be entitled to terminate this lease upon thirty (30) days written notice.

**7. LIMITATION:** In connection with use of the Premises, LESSEE shall:

7.1 Comply with all applicable laws, statutes, regulations, rules, permits including any special use permits and zoning ordinances of any public authority affecting the Premises and the use thereof and shall bear, at LESSEE'S sole cost and expense, any costs of such compliance including, but not limited to, any attorneys' fees, costs, fines or penalties; provided however, that if the basis for the assertion of non-compliance is or is attributable to a condition of, on, or with respect to the Premises which existed at the Commencement Date of this Lease, LESSOR shall bear any costs of such compliance;

7.2 Remove no valuable material, trees or other vegetation without prior written consent of LESSOR;

7.3 Take all reasonable precautions to protect the Premises from fire and other casualties, and make every effort to report and suppress such fires and mitigate such casualties as may occur;

7.4 Obtain and maintain all applicable licenses or permits;

7.5 Not live, reside, or permit others to live or reside on the Premises;

7.6 Not interfere with the conduct of LESSOR'S educational programs and related activities, so long as such programs and related activities are either pursuant to the Education Cooperative or Programming Agreements between the LESSOR and LESSEE or the LESSEE otherwise consents to such programs and related activities; and

7.7 Assure that the Premises, and any condition thereon, not become or constitute a hazardous condition or attractive nuisance, whether for users, for invitees, licensees, or trespassers.

## **8. IMPROVEMENTS:**

8.1 No improvements shall be placed on the Premises without the prior written consent of LESSOR, which shall not be unreasonably withheld, conditioned or delayed so long as consistent with LESSEE'S purposes for usage of the Premises as set forth herein. Consent shall be granted through this lease by a written letter of authorization issued by LESSOR'S Superintendent or designee. Improvements to which LESSOR has granted such consent shall become the property of LESSOR. At LESSOR'S option, at the termination of this Lease, unauthorized improvements shall be removed by LESSEE without damage to the Premises, removed by LESSOR at LESSEE'S expense, or become the property of LESSOR.

8.2 All improvements currently on the Premises belong to LESSOR.

8.3 The parties understand that LESSEE may hereafter make improvements to the Premises, at LESSEE'S sole cost and expense. LESSEE'S plans and specifications for the improvements shall be submitted to LESSOR and LESSOR shall approve such plans and specifications, which approval shall not be unreasonably withheld, conditioned or delayed so long as consistent with LESSEE'S purposes for usage of the Premises as set forth herein. LESSOR does not and will not make any covenant or warranty, express or implied, that any plans and specifications submitted by LESSEE are accurate, complete or in any way suited for the intended purpose.

8.4 LESSEE shall use its good faith efforts to have all work provided and called for by the plans and specifications done in a good and workmanlike manner and in compliance with all applicable laws, ordinances, regulations, or requirements of any governmental authority.

8.5 All LESSEE improvements, unless otherwise set forth in this agreement or in writing signed by LESSOR, shall be at the LESSEE'S sole cost, expense, and risk, and LESSEE shall use a licensed and bonded contractor for implementation.

8.6 LESSEE shall keep the Premises free from any liens or encumbrances and shall indemnify and hold LESSOR harmless and defend it from any liens or encumbrances arising out of the work performed relative to the LESSEE'S improvements.

8.7 LESSEE shall take reasonable steps to ensure that the work to complete the LESSEE improvements shall occur in a way calculated to reasonably avoid disturbance to LESSOR'S educational programs and related activities. LESSEE shall provide written notice to LESSOR when the improvements are desired to occur and shall perform the portions of the improvements which might adversely impact LESSOR at a time calculated to reasonably avoid such impact.

8.8 If for any reason LESSEE does not reasonably fulfill any duty to operate, maintain, repair, and, if required, remove improvements, LESSOR shall have the right to self help, and in connection with such rights, shall have the right to enter the Premises, to operate, maintain, repair, and/or remove improvements, and to be compensated by LESSEE, for the full and actual amount of the costs of any

operation, maintenance, repairs, or removal of the improvements as required by this lease, applicable ordinances, codes, rules and regulations or emergencies requiring action for the protection of facilities, persons or property.

**9. RESTORATION:** Upon the expiration or earlier termination of this lease, except as expressly provided herein, LESSEE shall promptly restore the Premises to (1) the condition existing immediately prior to the signing of this lease, reasonable wear and tear excepted, or (2) if so desired by the LESSOR, to the condition existing immediately prior to the termination of the lease. Such restoration shall be done at the sole cost and expense of LESSEE and in a manner reasonably satisfactory to the LESSOR. If the restoration is not done in a manner reasonably satisfactory to LESSOR, the self help provisions herein shall apply. These obligations shall survive termination of this lease.

**10. REPAIRS AND MAINTENANCE:**

10.1 Except as provided in Section 10.2, below, LESSEE shall, at its sole cost and expense, keep and maintain the entire Premises, including without limitation, all heating, ventilation and air conditioning (HVAC) equipment at the Premises, in good condition and shall promptly make any and all repairs and replacements, whether structural or non-structural, necessary to keep the Premises in a safe operating condition, including, without limitation, any and all utilities and other systems serving the Premises. With respect to the parking lot, recognizing that such lot serves both Ferris High School and the Premises, LESSEE shall keep its portion of the lot (as defined in Section 45, below) free and clear of ice and snow, and shall re-stripe its portion of the parking lot (as defined in Section 45, below) as and when necessary. LESSEE shall also be responsible for snow and ice removal for the walkways adjacent to the Premises, as well as mowing and spraying weeds around the Premises at its sole cost and expense.

10.2 The LESSOR shall at its sole cost and expense, be responsible to maintain and repair the roof structure and roofskin, foundation, footings, subfloor, and, except as provided in section 10.1, the parking lot, and, should it be necessary, to replace the HVAC system; provided, however, repairs or replacements caused by LESSEE, other than LESSEE's reasonable use of the Premises in the ordinary course of business, shall be charged to the LESSEE.

**11. ASSIGNMENT/SUBLEASE:** LESSEE shall not have the right to assign or sublet the Premises of any part thereof without the prior written consent of the LESSOR.

**12. UTILITIES:** LESSOR agrees, at its sole cost and expense, to provide for any necessary construction, extension and connection of any utilities, including, but not limited to, sanitary sewer, water, electrical, gas, to the Premises. The utilities shall be constructed, extended and connected in accordance with applicable regulations, requirements and conditions of any governmental authorities. Utilities to be constructed, extended and connected shall be capable of adequately serving another user.

LESSEE shall pay for all utility services supplied to the Premises, and if required by the utility agencies as a condition of continuing said services, LESSEE will install and pay for standard metering devices for the measurement of such services. In the event it shall become necessary to make changes upon the Premises or within the building covered by this lease, such as wiring, plumbing or similar installations, as a condition of the continuance of utility services, LESSEE shall promptly make such changes and installations, at its expense, as directed and required by the utility agencies; provided

however, if LESSOR has given to LESSEE a recapture notice under Section 46 and it shall become necessary to make such changes with less than one year remaining prior to recapture, LESSOR shall promptly make such changes and installations, at its expense.

LESSEE shall be responsible and pay for all electricity, gas, sewer, garbage, water, heat, telephone, and any and all other utilities in connections with said Premises during the term of the lease so that the same shall not become a lien against the leased Premises.

**13. TAXES:** LESSEE shall pay any and all federal, state and local taxes including, but not limited to, personal property tax and leasehold excise tax that may be charged against the lease and improvements located on the Premises during the lease term, prorated to the date of termination; provided, however, such taxes will be prorated to the date of LESSEE'S cessation of occupancy following any notice of recapture under Section 46. If LESSEE provides LESSOR with proof of exemption from the Washington state Department of Revenue, then LESSEE shall not be required to pay leasehold excise tax.

**14. INSPECTION:** LESSOR shall have the right to come upon the Premises at reasonable hours for the purpose of inspecting the same, or to make any necessary repairs, replacements or alterations to the Premises.

**15. UPKEEP:** LESSEE shall, during the term of this lease, keep said Premises neat, clean, safe and in sanitary condition, and commit no waste or suffer any to be done upon said Premises; and shall maintain lawns and landscaping around the Premises in a neat and orderly manner. Each party to this lease shall immediately notify the other party of any unsafe condition in, on or about the Premises that might lead to injury of persons or property.

**16. INDEMNITY:**

16.1 Except as provided in section 16.2, below, LESSEE shall defend, indemnify, hold and save harmless LESSOR, its agents, representatives, directors, and employees ("Indemnitees") from all loss, damage, liability, claims, allegations, demands, suits, causes of action, settlements, judgments, or expenses (including attorney fees and all expenses of litigation), (each and all, hereinafter "Claim"), resulting from any actual or alleged injury or death of any person, or from any actual or alleged loss of or damage to any real or personal property, caused by or resulting from any act or omission of LESSEE or its employees, agents, or contractors occurring in, on or about the Premises, or arising out of the LESSEE'S use or possession of the Premises, or the LESSEE's non-performance of the terms of this lease. This agreement to defend, indemnify and hold harmless shall be triggered upon the assertion of any Claim against any Indemnitee within the scope of LESSEE'S said defense, indemnification and hold harmless obligations. Attorney fees and litigation expenses incurred by any Indemnitee in successfully enforcing the obligations in this paragraph shall be paid by LESSEE.

LESSEE further agrees that its, defense, indemnity and hold harmless obligations shall apply to Claims made by its own employees against an Indemnitee, but in that instance only to the extent of LESSEE'S own negligence or fault in whole or partly causing the claimant's damages. To that extent, LESSEE therefore knowingly and expressly waives any immunity that it otherwise might have been entitled to invoke under Title 51 RCW in opposition to a claim for defense, indemnity, or hold harmless

hereunder. LESSEE agrees by initialing this provision that this waiver of immunity under Title 51 RCW has been expressly and specifically negotiated by them: [REDACTED] (LESSEE'S Initial).

16.2 Except as provided in section 16.1, above, LESSOR shall defend, indemnify, hold and save harmless LESSEE, its agents, representatives, directors, and employees ("Indemnitees") from all Claims, resulting from any actual or alleged injury or death of any person, or from any actual or alleged loss of or damage to any real or personal property, caused by or resulting from any act or omission of LESSOR or its employees, agents, or contractors occurring in, on or about the Premises, or arising out of the LESSOR'S ownership of the Premises, or the LESSOR'S non-performance of the terms of this lease. This agreement to defend, indemnify and hold harmless shall be triggered upon the assertion of any Claim against any Indemnatee within the scope of LESSOR'S said defense, indemnification and hold harmless obligations. Attorney fees and litigation expenses incurred by any Indemnatee in successfully enforcing the obligations in this paragraph shall be paid by LESSOR.

LESSOR further agrees that its, defense, indemnity and hold harmless obligations shall apply to Claims made by its own employees against an Indemnatee, but in that instance only to the extent of LESSOR'S own negligence or fault in whole or partly causing the claimant's damages. To that extent, LESSOR therefore knowingly and expressly waives any immunity that it otherwise might have been entitled to invoke under Title 51 RCW in opposition to a claim for defense, indemnity, or hold harmless hereunder. LESSOR agrees by initialing this provision that this waiver of immunity under Title 51 RCW has been expressly and specifically negotiated by them: [REDACTED] (LESSOR'S Initial).

## 17. INSURANCE:

17.1 LESSEE shall procure and maintain during the term of this lease, at LESSEE'S sole cost and expense, the following insurance:

A. General Liability Insurance on an occurrence basis, with a limit of not less than \$1,000,000 each occurrence for bodily injury and property damage. Such policy shall include, without limitation, premises and operations, independent contractors, products and completed operations, personal injury liability, and contractual liability coverage for the defense, indemnity, and hold harmless obligations provided under this lease.

There shall be no cancellation, material change, or reduction of limits or intent not to renew insurance coverage(s) without forty five (45) calendar days written notice from LESSEE or its insurer(s) to LESSOR. LESSOR shall be listed as an additional insured on LESSEE'S policy of general liability insurance for all activities or risks that may arise from the subject matter of this lease, and LESSEE shall provide LESSOR with current Certificates of Insurance evidencing LESSEE'S compliance with this paragraph prior to the use of the Premises.

Such certificates shall include applicable policy endorsements, the forty five (45) calendar day cancellation clause, and the deduction or retention level. Insuring companies or entities are subject to LESSOR acceptance. LESSEE shall be financially responsible for all deductions, self insured retentions, and/or self insurance.

B. Property and Loss of Use Insurance for the LESSEE'S own personal property, contents and LESSEE improvements to limits and other insurance conditions deemed appropriate by LESSEE, but in no event in amounts less than the fair market value of such property, for foreseeable causes of loss. Without limitation, the LESSEE shall purchase and maintain such insurance as will insure against loss of use of the Premises due to fire or other hazards, however caused, and shall include coverage for debris removal and property restoration. LESSEE waives all rights of actions against the LESSOR for damage, destruction, or loss of use of the Premises or improvements to be made thereon, including consequential losses, due to fire or other hazard, however caused, including by negligence or fault of the LESSOR.

17.2 LESSOR shall maintain in force during the term of this Lease a policy of insurance issued by a company authorized to engage in the insurance business in the State of Washington, insuring the improvements on the Premises for an amount not less than replacement cost against damage or destruction by perils covered by the standard form of fire and extended coverage including malicious mischief endorsements to fire insurance policies in the State of Washington in effect at the time that the policies are obtained.

#### **18. WAIVER OF SUBROGATION:**

18.1 Except as is provided in Section 18.3, in addition to, and not by way of limitation of, any party's obligation to indemnify the other, LESSEE and LESSOR hereby waives such party's rights of recovery against the other party for any loss insured by fire, extended coverage, and other property insurance policies existing for the benefit of any party. Each party shall obtain any special endorsements, if required, by its insurer to evidence compliance with the waiver.

18.2 Each insurance policy obtained by either party shall provide that the insurance company waives all rights of recovery by way of subrogation against the other party in connection with any damage covered by the policy. Neither party shall be liable to the other party for any damage caused by fire or any other risk insured against under any property insurance policy carried under the terms of this lease to the extent of such insurance.

18.3 The waivers described in Section 18.1 will be of no force or effect to the extent that (and only to the extent that) the fact of such waivers would expressly invalidate any policy of insurance required to be maintained by this lease.

**19. CASUALTY:** Should the Premises be destroyed by fire, or other casualty, or be so damaged thereby that they become untenable, this lease may be terminated by either LESSOR or LESSEE. LESSEE shall not pay rent herein specified during the time the Premises are unfit for occupancy. Should the Premises be partially tenantable, if the Premises may be operated for the specified use employing only the tenantable portions of the Premises, LESSEE shall pay the portion of the rent, which the occupied part bears to the whole.

#### **20. DEFAULT:**

20.1 If default shall at any time be made by LESSEE in the payment of rent when due to LESSOR as herein provided, and if said default shall continue for thirty (30) days after written notice thereof shall have

been given to LESSEE by LESSOR, or if default shall be made in other covenants or conditions to be kept, observed and performed by LESSEE, and such default shall continue for thirty (30) days after notice thereof in writing to LESSEE by LESSOR without correction thereof then having been commenced and thereafter diligently prosecuted, LESSOR may declare the term of this lease ended and terminated by giving LESSEE written notice of such intention, and if possession of the leased Premises is not surrendered, LESSOR may reenter said Premises. LESSOR shall have, in addition to the remedy above provided, any other remedy available to LESSOR on account of any LESSEE default, either in law or equity.

If by reason or any default on the part of the LESSEE, it becomes necessary for the LESSOR to employ attorneys, such reasonable attorneys' fee and costs incurred by LESSOR shall be reimbursed by the LESSEE. If the LESSOR shall bring suit to recover any rent due hereunder, or for any breach of any provision of this lease, or to recover possession of the Premises, or to otherwise enforce any provision of this lease or if LESSEE shall bring any action for any relief against LESSOR, declaratory or otherwise, arising out of this lease, the prevailing party shall recover, in addition to costs and disbursements, such attorneys' fees as the court may adjudicate reasonable to be allowed in such suit or action or on any appeal thereof, plus interest, court costs, and all costs of suit.

20.2 If LESSOR defaults with respect to any of LESSOR's obligations under this Lease, LESSEE shall give LESSOR not less than thirty (30) days' notice of default. Upon the expiration of such period, such default meanwhile not having been cured, LESSEE may (a) cure such default, and apply the cost thereof, against the amounts for which LESSEE is liable under the Programming Agreement or hereunder in respect of any cash rent obligations of LESSEE and/or (b) pursue any other remedy allowed by law.

21. **SURRENDER:** LESSEE, at the expiration or termination of this lease, shall quit and surrender the Premises in good, neat, clean and sanitary condition and shall restore the Premises in accordance with Section 9, above.

22. **HOLDING OVER:** If LESSEE with the consent of LESSOR, continues in possession of said Premises after the expiration of the term of this lease, then LESSEE shall be deemed to be holding said Premises on a month-to-month tenancy, and in such event the parties agree to be bound by all terms, covenants, and conditions set forth in this lease. The rental for such tenancy shall be subject to negotiation within thirty (30) days of the expiration of the term of this lease. Should no rental amount be agreed upon, then the rental shall be the same as last in effect under the provisions of this lease.

23. **NON-WAIVER OF BREACH:** Failure of either party to insist upon strict performance of any of the covenants and agreements of the other party, or to exercise any option herein conferred in one or more instances, shall not be construed to be a waiver or relinquishment of such covenant, agreement, or option, or any other covenant, agreements or options contained herein, but the same shall be and remain in full force and effect.

24. **WASTE:** LESSEE agrees not to commit or permit any waste, damage, injury or any public or private nuisance or any other act which disturbs the quiet enjoyment of any neighbor to the Premises or appurtenances, and to keep the grounds of the Premises in good order.

25. **INSPECTION FEES:** LESSEE shall, during the term of this lease, pay all fees due to the City, County and State on account of any inspection made on said leased Premises by any officer of said City, County and/or State in regard to LESSEE'S use of the Premises as provided for in this lease.

26. **NO PARTNERSHIP:** LESSOR is neither a partner nor a joint venturer with the LESSEE in connection with the activities conducted under this lease, and the LESSOR shall have no obligation with respect to the LESSEE'S debts or other liabilities.

27. **LIENS:** LESSEE shall pay for all materials adjoined or affixed to the Premises, and pay in full all persons who perform labor upon the Premises and will not suffer any mechanic's, materialman's or other liens of any kind to be enforced against the Premises for any work done, or materials furnished, at the LESSEE'S insistence or request. If any such liens are filed thereon, LESSEE agrees to remove the same at LESSEE'S own cost and expense and to pay any judgment which may be entered. Should the LESSEE fail, neglect or refuse to do so, LESSOR shall have the right to pay any amount required to release any such lien or liens, or to defend any action brought, and to pay any judgment entered, and the LESSEE shall be liable, to the LESSOR for all costs, damages, and reasonable attorneys' fees, and any amounts expended in defending any proceedings, or in the payment of any said liens or any judgment obtained. LESSOR may post and maintain upon the Premises notice of nonresponsibility.

28. **ATTORNEYS FEES:** In the event legal action becomes necessary to enforce or interpret the terms of this lease, the prevailing party in any legal action shall be entitled to recover reasonable attorneys' fees and costs incurred in such action, as determined by the court. In the event of any appeals from such actions, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in such appeals, and determined by the court(s). The term "costs" shall include, in addition to statutory costs and disbursements, all costs associated with discovery depositions, expert witness fees, and out-of-pocket costs incurred by the prevailing party in the prosecution or defense of the action. For the purpose of this paragraph, the term "action" shall be deemed to include any proceeding commenced in the bankruptcy courts of the United States.

29. **BINDING ON SUCCESSORS:** The covenants, agreements and conditions herein contained shall extend to and be obligatory upon and inure to the benefit not only of the LESSOR and LESSEE but also upon their successors and assigns.

30. **SURVIVAL:** If any provision or part thereof of this lease is held to be invalid or be found contrary to law, the remaining portions of this lease shall remain in full force and effect. Further, the parties shall negotiate and agree upon a replacement provision to such an invalid provision, which replacement provision as closely as possible approximates the intended benefits and burdens of the invalid provision.

31. **PRIOR AGREEMENTS:** This lease and the terms herein shall replace and supersede all prior leases, agreements, and any other document between the parties affecting the Premises, its operation or management.

32. **EMPLOYMENT STATUS:** Nothing contained in this lease, or related documents shall be construed as creating any form of an employment relationship between the LESSOR and LESSEE or the agents, officers, contractors, volunteers or employees of LESSEE. The agents, officers, contractors, volunteers or employees of LESSEE shall not be entitled to any rights or privileges of the LESSOR'S

employment. LESSEE assumes exclusive responsibility for any and all acts of its agents, officers, contractors, volunteers, or employees.

**33. TOBACCO, DRUGS AND WEAPONS:** LESSEE acknowledges that the Premises are to be maintained as a tobacco, drug and weapon free environment. LESSEE agrees to prohibit tobacco, drugs and weapons at or about the Premises.

**34. DELETERIOUS, HAZARDOUS, TOXIC, OR HARMFUL SUBSTANCES:**

34.1 Deleterious Material. LESSEE shall not make, or suffer to be made, any filling in of the Premises or any deposit of rock, earth, ballast, refuse, garbage, waste matter, chemical, biological or other wastes, hydrocarbons, any other pollutant, or other matter within or upon the Premises, except as approved in writing by the LESSOR. If the LESSEE fails to remove all nonapproved fill materials, refuse, garbage, wastes or any other of the above materials from the Premises, the LESSEE agrees that the LESSOR may, but is not obligated to, remove such materials and charge the LESSEE for the cost of removal and disposal.

34.2 Hazardous, Toxic, or Harmful Substances. LESSEE shall not keep on or about the Premises, any substances now or hereinafter designated as or containing components now or hereinafter designated as hazardous, toxic, dangerous, or harmful, and/or which are subject to regulation as hazardous, toxic, dangerous, or harmful by any federal, state or local law, regulation, statute or ordinance (hereinafter collectively referred to as "Hazardous Substances") unless such are necessary to carry out the LESSEE'S permitted use and unless the LESSEE fully complies with all federal, state and local laws, regulations, statutes, and ordinances, now in existence or as subsequently enacted or amended.

34.3 Notice. The LESSEE and LESSOR, respectively, shall:

34.3.1 Immediately notify the other party of (i) all spills or releases of any Hazardous Substances affecting or potentially affecting the Premises, (ii) all failures to comply with any federal, state, or local law, regulation or ordinance, as now enacted or as subsequently enacted or amended, (iii) all inspections of the Premises or any adjacent property owned by a party to this lease by, or any correspondence, orders, citations, or notifications from any regulatory entity concerning Hazardous Substances affecting the Premises, (iv) all regulatory orders or fines or all response or interim cleanup actions taken by or proposed to be taken by any government entity or private party concerning the Premises or any adjacent property owned by a party to this lease; and

34.3.2 On request, provide copies to the other party of any and all correspondence, pleadings, and/or reports received by or required of the such party or issued or written on behalf of such party with respect to the use, presence, transportation or general of Hazardous Substances related to the Premises or any adjacent property owned by a party to this lease.

34.3.3 The LESSEE shall be fully and completely liable to the LESSOR, and shall indemnify, defend, and hold harmless the LESSOR and its agents, representatives, directors, and employees with respect to any and all damages, costs, fees (including attorneys' fees and costs), penalties (civil and criminal), and cleanup costs assessed against or imposed as a result of the LESSEE'S use, disposal, transportation, generation and/or sale of Hazardous Substances or that of

the LESSEE'S employees, agents, assigns, subleases, contractors, subcontractors, licensees or invitees, and for any breach of this subsection.

34.4 Representation: To the best of its knowledge and without having engaged in any environmental studies or due diligence regarding hazardous substances, LESSOR represents that, except as stored or used in the ordinary course of the LESSOR's business at the Premises, it has no knowledge, as of the date of the lease, of any Hazardous Substances now in, on, or under the Premises.

35. [INTENTIONALLY DELETED].

36. **NOTICES:** Any notices to be given hereunder by either party may be affected either by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Notices delivered personally shall be deemed communicated as of actual receipt, mailed notices shall be deemed communicated as of the effective day of mailing, if prepaid. All notices shall be sent to the following address, unless actual notice in writing of a different address for notices is received by the other party:

LESSOR: Spokane School District No. 81  
ATTN: Superintendent  
200 North Bernard Street  
Spokane, WA 99201-0282

LESSEE: FRIENDS OF KSPS  
ATTN: Executive Director  
3911 South Regal Street  
Spokane, WA 99223

37. **INTERPRETATION:** This lease has been submitted to the scrutiny of all parties and their counsel, if desired, and it shall be given a fair and reasonable interpretation in accordance with its words, without consideration to or weight given to its being drafted by any party or its counsel.

38. **TIME OF ESSENCE:** Time is of the essence of each provision of this lease.

39. **CONDEMNATION:** If all of the Premises are taken, including any purchase in lieu of condemnation, by any public authority under the power of eminent domain, this lease shall terminate as of the date possession was taken by said public authority, or, if earlier, on the date on which LESSEE vacates the Premises as a result of having received notice of said taking. If any part of the Premises is so taken and, in the opinion of either the LESSOR or the LESSEE, is not feasible to continue this lease, either party may terminate the lease. Such termination by either party shall be made by notice to the other party given not later than thirty (30) days after possession is so taken, the termination to be effective as of the later of thirty (30) days after said notice or the date possession is so taken. If part of the Premises is so taken and neither the LESSOR nor the LESSEE elects to terminate this lease, or until termination is effective, as the case may be, the payment due under this lease shall be abated in the same proportion as the portion of the Premises so taken bears to the whole of the Premises. All damages awarded for the taking or damaging of all or any part of the Premises, or the improvements thereon, shall belong to and

become the property of the LESSOR, and the LESSEE hereby disclaims and assigns to the LESSOR any and all claims to such award; provided, however, that LESSEE shall retain the right to make claims for relocation expenses or lease termination awards

**40. MORTGAGES:** LESSEE shall not have the right to mortgage its leasehold interest in the Premises and its personal property and trade fixtures to secure obligations incurred for improving the leased Premises.

**41. GOVERNING LAW/VENUE:** The terms of this lease shall be governed by the laws of the state of Washington. In the event that legal action is commenced to resolve a dispute arising out of this lease, the venue of such action shall be in Spokane County, Washington.

**42. PARTIES' AUTHORITY:** Persons executing this lease on behalf of the LESSEE and LESSOR represent that they are authorized to do so and represent and warrant that this lease is a legal, valid, and binding obligation on behalf of the party for which they are signing, and, subject to section 43, below, is enforceable in accordance with its terms.

**43. BOARD APPROVAL:** This lease is conditioned upon approval by the Board of Directors of Spokane School District No. 81.

**44. ASSET PURCHASE AGREEMENT/LEASE AGREEMENT/SERVICES AGREEMENT/EDUCATIONAL COOPERATIVE AGREEMENT:** This lease is conditioned upon LESSOR and LESSEE'S mutual execution and closing of the Asset Purchase Agreement attached hereto as **Exhibit "C"**, and the execution and delivery at such closing of the Purchase and Sale Agreement attached hereto as **Exhibit "D"**, the Agreement for KSPS Programming Services attached as **Exhibit "A,"** and the Educational Cooperative Agreement attached hereto as **Exhibit "E"**.

**45. PARKING:** LESSOR hereby licenses to Lessee, its employees and invitees the right to use in common with others entitled thereto, the parking area substantially shown on Exhibit "F" attached hereto, subject however to, the terms and conditions of this lease and to the reasonable rules and regulations for the use thereof prescribed from time to time by LESSOR.

**46. RECAPTURE NOTICE:** . In accordance with Section 4, above, LESSOR shall have the right to terminate this Lease and recapture the Premises if the LESSOR determines that the Premises are needed for any school district purposes. If the LESSOR does so, the LESSEE shall vacate the Premises, but shall have no obligation to restore the Premises under Section 9 above. LESSOR and LESSEE agree that, if LESSOR exercised the recapture right set forth herein, it would take LESSEE up to three (3) years to identify and renovate or build an alternative facility meeting the LESSEE's needs. Accordingly, LESSOR agrees that LESSOR shall give LESSEE not less than three (3) years' notice of LESSOR's decision to exercise LESSOR's recapture right.

**47. LESSEE'S RIGHT OF FIRST OFFER:** LESSEE is hereby granted a right of first offer to purchase the Premises, as set forth in this Paragraph 47, if LESSOR declares the Premises surplus and initiates the procedures for selling school district real property pursuant to RCW 28A.335.120 as it now exists or is hereinafter amended during the term of this lease. In such event, the parties shall negotiate in good faith with one another for a period of at least one hundred eighty (180) calendar days. If,

notwithstanding good faith negotiation, the parties are unable to reach agreement within such period, the LESSOR shall be free to offer the Premises for sale to third parties. This Lease shall survive such third-party sale, but this Paragraph 47 shall not survive, and shall be extinguished by, such third party sale.

**LESSOR**

**LESSEE**

Spokane School District No. 81

FRIENDS OF KSPS

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

By: Dr. Mark Anderson  
Title: Associate Superintendent,  
School Support Services

By: Gary A. Stokes  
Title: Executive Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF WASHINGTON )

: ss.

County of Spokane )

On this \_\_\_\_ day of \_\_\_\_\_, 2013, before me personally appeared Mark Anderson, Ph.D., to me known to be the Associate Superintendent of Spokane School District No. 81, the municipal corporation that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
Notary Public in and for the State of  
Washington residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

STATE OF WASHINGTON )

County of Spokane ) : ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2013, before me personally appeared Gary A. Stokes, to me known to be the Executive Director of FRIENDS OF KSPS, the nonprofit corporation that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
Notary Public in and for the State of  
Washington, residing at \_\_\_\_\_.  
My Commission Expires: \_\_\_\_\_

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Lease Agreement Schedule 7.1.g.1.docx

Exhibit "A"  
**Programming Agreement**

**Exhibit "B"**

**Description of Premises**

Exhibit "C"

**Asset Purchase Agreement**

Exhibit "D"

**Purchase and Sale Agreement**

Exhibit "E"

**Educational Cooperative Agreement**

Exhibit "B"  
ASSET PURCHASE AGREEMENT

Exhibit "C"  
PURCHASE AND SALE AGREEMENT

Exhibit "D"  
AGREEMENT FOR KSPS PROGRAMMING SERVICES AND STUDENT  
WORK-BASED CAREER AND TECHNICAL TRAINING OPPORTUNITIES AT KSPS

Exhibit "E"  
PARKING

**SCHEDULE 7.1(g)(2)**

**AGREEMENT FOR  
KSPS PROGRAMMING SERVICES,  
AND OTHER SERVICES**

This Agreement For KSPS Programming Services and Other Services ("Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between Spokane School District No. 81, a Washington state municipal corporation ("District"), and FRIENDS OF KSPS, a Washington state nonprofit corporation ("Provider").

In consideration of the following terms and conditions, the parties agree as follows:

1. **PURPOSE:** The purpose of this Agreement is to provide for the terms and conditions by which Provider will provide the District \$222,000 worth of KSPS programming services and other services (together the "Services") mutually agreed upon from the Provider for each year of this Agreement.
2. **TERM:** The term of this Agreement shall commence on September 1, 2013 and end on August 31, 2018, unless terminated earlier by mutual agreement as set forth herein. In addition, unless the parties otherwise agree, this Agreement shall terminate upon the recapture of the Premises which Provider is leasing from the District, as set forth at Section 4 of the Lease to which this Programming Agreement is an exhibit.

3. **PROVIDER RESPONSIBILITIES:**

3.1 **General.**

- a. **Performance.** The Provider represents that it is in all respects qualified to perform the Services and is capable of performing the Services described herein. The Provider shall perform the Services with a high standard of care, skill and diligence. At all times of performance, the Provider shall be properly licensed, equipped, organized and financed to perform the Services.
- b. **Compliance.** The Provider shall comply with all applicable federal, state and local laws, regulations, codes and orders.
- c. **Non-Discrimination.** The Services shall be provided in a manner consistent with all applicable civil rights laws. Provider agrees not to discriminate in the provision of Services on the basis of race, color, national origin, sex, age, creed, sexual orientation, marital or veteran status, or disability.
- d. **Independent Contractor.** The Provider shall be and operate as an independent contractor and shall have exclusive control over and responsibility for the conduct of all personnel it hires to perform the Services. The Provider is not an agent of the District for any purpose, and is not authorized on behalf of the District to enter into any agreements, or to waive any provisions of the Agreement. The Provider

employees shall solely be employees of the Provider and not employees of the District. The Provider has the obligation and exclusive right to direct and control its employees as to how they go about performing their duties on a day to day basis. The Provider shall be exclusively responsible for the hiring, training, supervision, evaluation, discipline, and dismissal of its employees and all payroll related matters, including, but not limited to, federal income tax withholding, workers compensation coverage, unemployment coverage, and other related payroll responsibilities. Provider assumes exclusive responsibility for any and all acts of its agents, officers, contractors, volunteers, or employees.

- e. **Assignment.** The Provider shall not assign or otherwise dispose of this Agreement or any duty(ies), right(s), or responsibility(ies) contemplated in this Agreement to any other person without the prior written consent of the District.

### 3.2 Services:

- a. **Schedule and Value:** By June of 2013 and each June thereafter until June 2017, the District and Provider will determine in writing the schedule and value of Services to be provided to the District by Provider equal to approximately \$222,000 for the ensuing year as provided herein. The type and schedule of Services may be modified during the year by mutual written consent of the Parties provided the total value does not exceed \$222,000. The Provider will issue a quarterly report to the District on the value of and the Services provided. In the event the District requests exceed \$222,000 of Services during an applicable year and Provider agrees to provide such excess Services, the Provider will invoice the District for the excess Services on a quarterly basis at the same time as it issues its quarterly report and the District will promptly make payment to Provider. In the event that the District and Provider do not reach agreement on the schedule and value of Services to be provided for any particular year prior to the commencement of that year's service period (which begins each September 1), the schedule and value of Services from the prior year's service period shall be deemed to apply for that year.
- b. **Programs.** The Provider will produce and broadcast various programs for the District to include (as agreed by the parties): School Talk, Educating Spokane, Community Connections, Documentaries, Informational Videos, etc. The Provider will have oversight and approval of content and subject matter, as well as *full and exclusive control* at all times over the operation of Station KSPS, including its programming offerings and schedule. Without limiting the foregoing, Provider shall have the exclusive right to preempt, reject or reschedule the broadcast of any program if Provider, in its reasonable judgment, concludes that the program does not serve the public interest, or that alternate programming or alternative program scheduling, would better address local needs. As between the parties, all right, title and interest in and to the programs produced and broadcast hereunder, and the right to authorize the use of the programs in any manner and in any media whatsoever, shall be and remain vested at all times solely in Provider. The District shall have no right to direct the operation of KSPS-TV or to make programming decisions or

employment decisions for KSPS-TV.

- c. **Other Services.** The District may request additional Services from the Provider not specifically identified, such as facility rentals and staff services, and Provider shall, if it agrees, provide such additional Services pursuant to this Agreement.

**4. PERSONNEL/RELATIONSHIP OF PARTIES:** The Provider warrants that all persons assigned to perform the Services under this Agreement are either lawful employees of the Provider or lawful employees of a subcontractor. All of the Provider's or any subcontractor's personnel shall comply with this Agreement. All persons assigned to perform the Services under this Agreement shall be qualified to perform such Services. If the District believes that the performance or conduct of any person employed or retained by the Provider or its subcontractor to perform any Services hereunder is unsatisfactory for any reason or is not in compliance with the provisions of this Agreement, the District shall notify the Provider and the Provider shall promptly address the performance or conduct of such person, and the Provider may replace such person with another person acceptable to the District and with sufficient knowledge and expertise to perform the Services in accordance with this Agreement.

This Agreement creates no relationship of joint venture, partnership, limited partnership, agency, or employer-employee between the parties, and the parties acknowledge that no other facts or relations exist that would create any such relationship between them. Neither party has any right or authority to assume or create any obligation or responsibility on behalf of the other party except as provided by written instrument signed by both parties.

**5. DOCUMENTATION OF SERVICES TO BE PROVIDED:** As contemplated by Section 3.2.a, above, the parties will determine and calculate the value of the scheduled Services by June of 2013 for the year commencing September 1, 2013, and each June thereafter for the next year, the value of which such Services for such year will equal approximately \$222,000. Provider will submit an annual report by August 31, 2014 and by each August 31 thereafter during the Term, of the Services provided to the District during the previous year. While the District is committed to using one hundred (100) percent of the planned Services during the applicable year, in the event the District does not actually use one hundred (100) percent of the planned Services during the applicable year, the Provider has no obligation to reimburse the District for the unused value of the planned Services.

**7. INDEMNIFICATION:** The Provider shall defend, indemnify, hold and save harmless the District, its agents, representatives, directors, and employees ("Indemnitees") from all loss, damage, liability, claims, allegations, demands, suits, causes of action, settlements, judgments, or expenses (including attorney fees and all expenses of litigation), (each and all, hereinafter, "Claim"), resulting from any actual or alleged injury or death of any person, or from any actual or alleged loss of or damage to any real or personal property, caused by or resulting from any act or omission by the Provider or its employees, agents, or contractors relating to, arising from, or connected with the Provider's performance of this Agreement. This agreement to defend, indemnify and hold harmless shall be triggered upon the assertion of any Claim against any Indemnitee within the scope of the Provider's said defense, indemnification and hold harmless obligations. Attorney fees and litigation expenses incurred by any Indemnitee in successfully enforcing the obligations of this section shall be paid by the Provider.

The Provider further agrees that its, defense, indemnity and hold harmless obligations shall apply to Claims made by its own employees against an Indemnitee, but in that instance only to the extent of the Provider's own negligence or fault in whole or partly causing the claimant's damages. To that extent, the Provider therefore knowingly and expressly waives any immunity that it otherwise might have been entitled to invoke under Title 51 RCW in opposition to a claim for defense, indemnity, or hold harmless hereunder. The Provider agrees by initialing this provision that this waiver of immunity under Title 51 RCW has been expressly and specifically negotiated by them:            (Provider's Initial).

**8. INSURANCE:**

For the duration of this Agreement, the Provider shall maintain in force at its own expense, the following insurance:

- 8.1** Worker's Compensation Insurance in compliance with Title 51 RCW;
- 8.2** Comprehensive General Liability Insurance, affording coverage on an "occurrence" as opposed to "claim made" basis, with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 aggregate for bodily injury and property damage. Such insurance shall include premises and operations, independent contractors, products and completed operations, personal injury liability, and contractual liability coverage for the defense, indemnity, and hold harmless obligations provided under this Agreement;
- 8.3** With respect to the insurance policies required of the Provider by the immediately preceding subsection 8.2 the Provider shall cause the insurers from whom it procures such insurance to issue endorsements to such policies, naming and protecting the District and its employees, agents, directors, and representatives, as additional insureds under such policies, for all purposes and claims made against the District or any of them related to or arising from the subject matter or performance of this Agreement;
- 8.4** There shall be no cancellation, material change, or reduction of limits or non-renewal of the insurance coverage required by this Agreement without forty-five (45) days' written notice to the District;
- 8.5** Before performance of this Agreement, the Provider shall furnish to the District copies of such certifications, endorsements, or other appropriate documents of proof, from the Provider's insurer(s), establishing to the District's satisfaction that compliance with the Provider's obligations under this Agreement has occurred; and
- 8.6** The Provider shall ensure that any individual or subcontractor it provides shall comply with the requirement in this Agreement.

**9. DISPUTE RESOLUTION:** In the event that a dispute shall arise regarding the terms, conditions, or breach of this Agreement, the parties shall, as a condition precedent to taking any action, mediate the dispute using the services of a mutually agreed upon independent mediator. The site of the mediation shall be in Spokane County, Washington. Each party shall pay one-half the expenses of the mediator and the facility for the mediation. Each party shall otherwise pay its own expenses.

**10. INTERGRATION/MODIFICATION:** This Agreement constitutes the entire and exclusive agreement between the parties regarding this matter and no deviations from its terms shall be allowed unless a formal, written, mutual agreement occurs between the parties. No such modification shall be valid unless the written modification is first provided via certified mail or personal delivery to each of the parties listed herein. Actual receipt by either party constitutes compliance with the requirement to send by certified mail or personal delivery.

**11. WAIVER OF BREACH/DEFAULT:** No waiver of any breach of any term of this Agreement shall be construed, nor shall be, a waiver of any other breach of this Agreement. No waiver shall be binding unless it is in writing and signed by the party waiving the breach.

**12. SEVERABILITY:** If any provision of this Agreement is determined to be invalid or ultra vires under any applicable statute or rule of law, it is to that extent to be deemed omitted and the balance of the Agreement shall remain enforceable.

**13. CONSTRUCTION:** The rule of construction that a contract is construed against the drafter shall not apply to any dispute over the interpretation of application of this Agreement.

**14. GOVERNING LAW/VENUE:** The terms of this Agreement shall be governed by the laws of the State of Washington. In the event that legal action is commenced to resolve a dispute arising out of this Agreement, the venue of such action shall be in Spokane County, Washington.

**15. ATTORNEYS' FEES:** In the event legal action becomes necessary to enforce or interpret the terms of this Agreement, the prevailing party in any legal action shall be entitled to recover reasonable attorneys' fees and costs incurred in such action, as determined by the court. In the event of any appeals from such actions, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in such appeals, and determined by the court(s). The term "costs" shall include, in addition to statutory costs and disbursements, all costs associated with discovery depositions, expert witness fees, and out-of-pocket costs incurred by the prevailing party in the prosecution or defense of the action. For the purpose of this paragraph, the term "action" shall be deemed to include any proceeding commenced in the bankruptcy courts of the United States.

**16. TERMINATION:** The Agreement may not be terminated during the term of this Agreement without mutual consent of the Parties. If this Agreement is so terminated, the District shall be liable only for payment required under the terms of the Agreement for Services rendered prior to the effective date of termination. Neither party shall be liable for any consequential or incidental damages, including, but not limited to, loss of profits or reputation incurred by the other party as a result of such termination. Upon the termination for any reason or expiration of this Agreement, the each party shall promptly return to the other all papers, materials, and other property of the other relating to this Agreement then in its possession.

**17. ACCOUNTING:** Provider agrees to maintain current and accurate accounting of Services performed and amounts paid or owing, including any amounts paid to any approved subcontractor. Upon request, the Provider shall provide the District with an accounting of Services, which shall detail the Services performed, the amounts paid to any approved subcontractors (supported by copies of all paid invoices) and such other information as the District may reasonably request. Upon request and for any

reason, the Provider shall provide the District with access to the books and records related to the Services of Provider and its subcontractors for inspection, audit, and reproduction.

**18. BINDING ON SUCCESSORS:** The covenants, agreements and conditions herein contained shall extend to and be obligatory upon and inure to the benefit not only of the District and Provider but also upon their successors and assigns.

**19. NOTICES:** Any notices to be given hereunder by either party may be affected either by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Notices delivered personally shall be deemed communicated as of actual receipt, mailed notices shall be deemed communicated as of the effective day of mailing, if prepaid. All notices shall be sent to the following address, unless actual notice in writing of a different address for notices is received by the other party:

District: Spokane School District No. 81  
ATTN: Superintendent  
200 North Bernard Street  
Spokane, WA 99201-0282

Provider: FRIENDS OF KSPS  
ATTN: Executive Director  
3911 South Regal Street  
Spokane, WA 99223

**20. PROVIDER'S AUTHORITY:** Persons executing this Agreement on behalf of the Provider represent that they are authorized to do so and represent and warrant that this Agreement is a legal, valid, and binding obligation on behalf of the Provider, and is enforceable in accordance with its terms.

**21. BOARD APPROVAL:** This Agreement is conditioned upon approval by the Board of Directors of Spokane School District No. 81.

**22. ASSET PURCHASE AGREEMENT/LEASE AGREEMENT/PURCHASE AND SALE AGREEMENT/EDUCATIONAL COOPERATIVE AGREEMENT.** This Agreement is conditioned upon the District and Provider's mutual execution of the Asset Purchase Agreement attached hereto as Exhibit "A", the Lease Agreement attached hereto as Exhibit "B", the Purchase and Sale Agreement attached hereto as Exhibit "C", and the Educational Cooperative Agreement attached as Exhibit "D".

**Spokane School District No. 81**

**FRIENDS OF KSPS**

Signed: \_\_\_\_\_  
By: Dr. Mark Anderson  
Title: Associate Superintendent, School Support Services

Signed: \_\_\_\_\_  
By: Gary Stokes  
Title: Executive Director

Date: \_\_\_\_\_  
F:\Users\47718\Purchase of Station\FINAL DOCUMENTS\  
Program Agreement Schedule 7.1.g.2.doc

Date: \_\_\_\_\_

Exhibit "A"  
ASSET PURCHASE AGREEMENT

**Exhibit "B"**  
**LEASE AGREEMENT**

Exhibit "C"  
PURCHASE AND SALE AGREEMENT

Exhibit "D"  
EDUCATIONAL COOPERATIVE AGREEMENT

**SCHEDULE 7.1(g)(3)**

**EDUCATIONAL COOPERATIVE AGREEMENT BETWEEN SPOKANE PUBLIC  
SCHOOLS AND FRIENDS OF KSPS**

**1. Parties.**

This Agreement is made and entered into by and between Spokane Public Schools, legally referenced as Spokane School District No. 81, a Washington state municipal corporation ("SPS") and Friends of KSPS, a Washington state non-profit tax exempt corporation ("Friends").

**2. Purpose.**

This Agreement is for the purpose of providing clinical education for SPS students. Friends will provide the facilities for clinical education allowing students to experience different areas of the television field in order for them to become skilled in this area.

**3. Term.**

This Agreement shall commence upon full execution and continue through August 31, 2014 and shall automatically be renewed for successive one year periods, unless terminated as provided for in the termination provision below.

**4. Friends Rights and Responsibilities:**

4.1 Compliance with Rules. Friends shall have authority to enforce its written rules of conduct/policies and general appearance rules with respect to students enrolled in the program. Friends shall have the right to terminate the use of its facilities by any student who is associated with this program where flagrant or repeated violations of Friends' rules, regulations, procedures and policies occur. Such actions will not be taken until the grievance against any student has been first discussed with SPS. Friends reserves the right, however, to take immediate action when necessary to maintain operation of its facility free from disruption, or to remove any student who, in the judgment of Friends, engages in any act of gross misconduct or reports for duty in an obviously impaired physical and mental condition. Furthermore, Friends shall have the right to terminate an individual from the program if he/she exhibits performance that negatively impacts Friends.

- 4.2 Supervision of Students and SPS Access. Friends shall provide direct supervision of students participating in the clinical learning situation. In the event of injury or accident to a student, Friends will provide immediate care to the student(s) and will report the incident to SPS as soon as possible but at least within twenty four (24) hours. Friends shall be responsible to maintain a safe environment for students and shall provide a right of access to all Friends facilities and programs, as it pertains to this Agreement, to SPS, its officers, agents and employees, and to any other agent or official of the federal, state or local governmental authorities, at all reasonable times, for the purpose of monitoring and evaluating educational performance and compliance with this Agreement. By providing a right of access to SPS, Friends does not in any way eliminate or reduce its responsibility to supervise students.
- 4.3 Unsupervised Access to Students. Pursuant to RCW 28A.400.303, any applicant or employee of Friends who will have regularly scheduled unsupervised access to students pursuant to this Agreement, shall be required to have successful completion of a background record check through the Washington State Patrol Criminal Identification System, under RCW 43.43.830-.834, RCW 10.97.30 & .50, and through the Federal Bureau of Investigation prior to hiring and prior to unsupervised access to children. The record check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card. When necessary, applicants and employees may be employed on a conditional basis pending completion of the background record check. SPS shall provide and pay for all costs associated with the background security checks and finger printing for Friends staff associated with this program.

SPS shall provide Friends with a copy of all background record check information for Friends employees and applicants who will have regularly scheduled unsupervised access to students pursuant to this Agreement annually, not later than August 31<sup>st</sup> for the upcoming fiscal year services. Further, as staffing needs may change, Friends will immediately notify SPS of any new staff that will have regularly scheduled unsupervised access to children, whereupon SPS will conduct and provide Friends with copies of the required background record check information pursuant to the preceding paragraph. Friends shall obtain a written release from employees and applicants subject to this provision that permits the record check information to be conducted by and shared with SPS.

Written Notice of staffing change will be sent to the attention of Dr. Mark Anderson at the address identified in Paragraph 10 of this Agreement.

Background record check information for Friends employees and applicants who will have regularly scheduled unsupervised access to students and written releases from the respective employees and applicants shall be sent to the attention of:

For SPS: Angela Brown  
Director, Employment Services  
Human Resources  
Spokane Public Schools  
200 N. Bernard  
Spokane, WA 99201

For Friends: FRIENDS OF KSPS  
ATTN: Executive Director  
3911 South Regal Street  
Spokane, WA 99223

- 4.4 Volunteer Background Checks. Any volunteers serving on behalf of Friends who have regularly scheduled unsupervised access to students for purposes of this Agreement, shall be required to have successful completion of a background record check through the Washington State Patrol Identification System, under RCWs 43.43.830-.834, 10.97.30, .50 and a disclosure statement regarding any other criminal involvement. SPS shall conduct such background record checks pursuant to section 4.3, above. When necessary, volunteers may be assigned on a conditional basis pending completion of the investigation.
- 4.5 Prohibited Employment. Friends shall prohibit any employee or contracted provider from having any contact with District students pursuant to this Agreement during the course of his or her employment if such individual has pled guilty to or been convicted of any felony crime specified in RCW 28A.400.322, as now or hereafter amended, including but not limited to any of the following felony crimes: any felony crime involving the physical neglect of a child under chapter 9A.42 RCW; the physical injury or death of a child under chapters 9A.32 or 9A.36 RCW, except motor vehicle violations under chapter 46.61 RCW; sexual exploitation of a child under chapter 9.68A RCW; sexual offenses under chapter 9A.44 RCW where a minor is the victim; promoting prostitution of a minor under chapter 9A.88 RCW; the sale or purchase of a minor child under RCW 9A.64.030; or violation of laws of another jurisdiction that are similar to those specified herein. Friends shall also prohibit any employee from having any contact with children pursuant to this Agreement during the course of his or her employment, if such individual has pled guilty to or been convicted of any of the following felony crimes or attempts, conspiracies, or solicitations to commit any of the following felony crimes: a felony violation of RCW 9A.88.010, indecent exposure; a felony violation of chapter 9A.42 RCW involving physical neglect; a felony violation of chapter 9A.32 RCW; a violation of RCW 9A.36.011, assault 1; 9A.36.021, assault 2; 9A.36.120, assault of a child 1; 9A.36.130, assault of a child 2; or any other felony violation of chapter 9A.36 RCW involving physical injury except assault 3 where the victim is eighteen years of age or older; a sex offense as defined in RCW 9.94A.030; a violation of RCW 9A.40.020, kidnapping 1; or 9A.40.030, kidnapping 2; a violation of RCW 9A.64.030, child selling or child buying; a violation of RCW 9A.88.070, promoting

prostitution 1; a violation of RCW 9A.56.200, robbery 1; or a violation of laws of another jurisdiction that are similar to those specified herein. Both parties shall engage in due diligence to learn whether any of its employees have pled guilty or been convicted of any such crime and shall require its employees to self report to their respective employer any such plea or conviction. Any failure to comply with this Paragraph shall be grounds for immediate termination of this Agreement notwithstanding any other provision in this Agreement.

- 4.5 Policies and Procedures. Friends shall have and maintain policies and procedures covering nondiscrimination, care of students in emergency situations, personnel policies, fire drills, staff duties and job descriptions, governance board duties and function and assurance of staff requirements and any other policies or procedures that may be required in order for the parties to conduct the activities contemplated by this Agreement.
- 4.6 Educational Program. Friends will have a room available in which students may be given their assignments, may participate in group discussion or receive individual counseling, and may leave their personal belongings. Friends shall allow, at times, the use of available supplies and equipment for educational and clinical purposes as well as access to sources of information necessary for student education. Friends staff will participate in the education of the students.

**5. SPS's Rights and Responsibilities:**

5.1 Providing Staff. SPS will provide an instructor during the hours the students are assigned to the clinical area unless otherwise agreed to in writing for each specific instance.

5.2 Instructor Responsibilities.

5.2.1 Course Planning and Implementation. The instructor will plan and implement the education offered to students in the clinical situation. Instructor will confer with Friends in relation and prior to the assignment of students to the clinical education described herein, but the assignment of students to such clinical experience shall rest solely within the discretion of SPS.

5.2.2 Student Information. At a pre-determined time before the clinical experience, the instructor will provide Friends with the following information:

- a. The number and names of students to be assigned.
- b. The dates and hours of assignment.
- c. Clinical objectives.
- e. Orientation.

- 5.3 Authorization Forms. SPS will require that students and/or parents sign consent and authorization form(s) as deemed appropriate by SPS. No student will be allowed to participate in such clinical experience unless and until such student and/or such student's parent(s) or guardian(s) sign such authorization form(s).
- 5.4 Right to Require Compliance with SPS's Rules. In addition to Friends' rules and regulations described in section 4.1, above, SPS retains the right to impose its own rules, regulations, restrictions, policies and procedures on any students or SPS employees who participate in any activities contemplated by this Agreement, regardless of whether such activities occur on SPS property or otherwise. Friends agrees that the programs it provides under this Agreement shall not be made available as a sanctuary of immunity for SPS employees or students.
- 5.5 Responsibility to Ensure Compliance with Friends' Rules. SPS shall ensure that students abide by the rules and regulations of Friends in connection with their activities under this Agreement. In entering into this Agreement, SPS is not relinquishing any of its rights and obligations to control any aspects of SPS/employee or SPS/student relationships regarding SPS and participants in programs hereunder.

## **6. Student Responsibilities and Status:**

- 6.1 Status. Students will have the status of learners and will not replace Friends's personnel. Any service rendered by the students is incidental to the educational intent of the clinical experience.
- 6.2 Compliance with Rules. Students shall adhere to Friends' and SPS' regulations, procedures and policies during the period of instruction.
- 6.3 Name Tags / Uniforms. Students will wear identification badges and be properly dressed and groomed at all times.
- 6.4 Student Accident Insurance Coverage. Students will participate in the School Accident coverage plan or will provide parents' signature on the Waiver of Accident Plan Coverage form.

## **7. Rights and Responsibilities of Both Parties:**

- 7.1 Compliance with Rules and Laws. The parties shall comply with all laws, ordinances and regulations of governmental bodies applicable to the program as well as applicable local policies and procedures as they are now or amended.

7.2 Cooperation/Communication. The parties acknowledge that regular ongoing communication is vital to the success of the collaborative nature of this Agreement. The following joint meetings of the parties shall occur throughout the term of this Agreement:

7.2.1 Team Meeting. SPS and Friends staff involved with the direct provision of educational services will meet as needed to address issues regarding delivery of services under this Agreement.

7.2.2 Program Review. Representatives from both parties shall conduct an annual program review to ensure compliance with this Agreement and to establish goals and objectives for the ensuing school year.

7.2.3 Coordinator of Services. Each party hereby designates the following persons to be their Coordinator of Services under this Agreement:

SPS: \_\_\_\_\_

Friends: \_\_\_\_\_

7.3 Occupational/Academic Training, Preparation and Coordination. Friends shall provide the occupational and training experience for students while SPS will provide academic preparation, coordination and support for the students in the program. Prior to the commencement of the program, Friends will advise SPS of the expectations Friends will have of students who are participating in the program. Friends shall instruct all students with respect to safety precautions and regulations related to the activities of the students under the program.

7.4 Student Eligibility. Only students of SPS will qualify for this education program pursuant to this Agreement. Notwithstanding the preceding sentence, nothing in this Agreement shall prevent Friends from entering into a similar agreement with and providing a similar clinical experience to students of another school or school district; provided however, that Friends shall provide such clinical experience to students of other schools or districts only if Friends' capacity to provide such clinical experience exceeds the number of SPS students assigned to such clinical experience.

7.5 Worksite Learning Agreement: A Worksite Student Learning Agreement shall be executed by each student who is at least 18 years old or each parent/guardian and by each students under the age of 18 who is participating in the program before commencement of the clinical training at the worksite. (See Exhibit A). No student will be allowed to participate in such clinical experience unless and until such student and/or such student's parent(s) or guardian(s) sign such Agreement.

7.6 No Dual Employment. Nothing contained in this Agreement, or related documents shall be construed as creating any form of an employment relationship between SPS and Friends or the agents, officers, volunteers or employees of SPS and the Friends. The officers, agents, employees or volunteers of Friends shall not be entitled to any rights or privileges of

employment with SPS. Friends assumes exclusive responsibility for any and all actions, rights and obligations of its officers, agents, employees or volunteers, and SPS assumes exclusive responsibility for any and all actions, rights and obligations of its officers, agents, employees or volunteers. SPS employees and students do not, by this Agreement, become agents or employees of Friends. Accordingly, SPS employees and its students shall not be entitled to any rights and privileges established for employees of Friends, such as vacation, sick leave with pay, paid days off, life, accident and health insurance or severance pay upon termination of this Agreement.

- 7.7 Nondiscrimination/Anti-Harassment. In the performance of this Agreement, the parties shall comply with all local, state and federal rules and regulations and shall not discriminate on the basis of age, sex, marital status, race, color, creed, national origin, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability, sexual orientation including gender expression or gender identity, or honorably discharged veteran or military status.
- 7.8 Indemnification/Hold Harmless/Duty to Defend. Each party to this Agreement is responsible for its own acts and omissions of its officers, employees, and agents. Each Party agrees to defend, indemnify, and hold the other Party harmless from and against any claim, demand, suit, or cause of action, (hereafter "claim"), that may be asserted against the indemnitee, if and to the extent the claim against the indemnitee is based on the actual or alleged fault of the indemnitor and relates to the subject matter of the performance of this Agreement. This indemnification obligation applies to all costs of investigation, attorney fees, litigation expenses, settlement, and judgment. Where claims are asserted against both of the parties based on actual or alleged concurrent or shared fault of the parties, a party shall not be required to indemnify the other party for that party's own proportionate share of fault.

The parties agree that these indemnification obligations shall apply to claims made by their own employees against an indemnitee, and the parties each therefore knowingly and expressly waive, for the benefit of the other party but not for the benefit of such employee(s), any immunity that they otherwise might have been entitled to invoke under Title 51.

- 7.9 Insurance. During the term of this Agreement, each party shall maintain in force at its own expense, the following insurance:
- 7.9.1 Worker's Compensation Insurance in compliance with RCW Title 51;
- 7.9.2 General Liability Insurance on an occurrence basis, with a combined single limit of not less than \$1,000,000 each occurrence and \$2,000,000 aggregate for bodily injury and property damage. It shall include premises and operations, independent

contractors, products and completed operations, personal injury liability, and contractual liability coverage for the indemnity provided under this Agreement;

- 7.9.3 Professional Liability or Errors and Omissions Liability Insurance. Friends shall provide proof of professional liability insurance or errors and omissions liability insurance for all Friends employees.

There shall be no cancellation, material change, or reduction of limits or intent not to renew insurance coverage(s) without forty five (45) days written notice from one party or its insurer(s) to the other party. When requested, each party shall furnish acceptable insurance certificates to the other. Such certificates shall include applicable policy endorsements, the forty five (45) day cancellation clause, and the deduction or retention level.

7.10 Damage to Property.

Each party shall be responsible to the other for damage caused by one party to the property owned by the other party. Each party shall be responsible to replace the damaged property to the reasonable satisfaction of the party who owned the property. Each party shall be responsible to protect buildings and grounds from damage and shall be responsible for cleaning up property used by that party.

**8. Assignment/Binding Effect.**

Performance of any or all aspects of this Agreement may not be assigned without written authorization by the other party. Likewise, neither party may assign their respective rights to any claims or actions arising out of or relating to this Agreement without written authorization.

**9. Integration/Modification.**

This Agreement constitutes the entire and exclusive agreement between the parties regarding this matter and no deviations from its terms shall be allowed unless a formal, written, mutual agreement occurs between the parties. No such modification shall be valid unless the written modification is first provided via certified mail or personal delivery to each of the parties listed in Paragraph 10 below. Actual receipt by either party constitutes compliance with the requirement to send by certified mail or personal delivery.

**10. Termination/Written Notice.**

Either party may cause this Agreement to terminate immediately, without cause, upon 30 days written notice via certified mail or personal delivery. Notwithstanding the preceding sentence, other than as a consequence of SPS' breach of this Agreement, which breach is not cured within

thirty (30) days' notice of such breach from Friends to SPS, Friends may not terminate this Agreement without SPS' written consent prior to the end of the then-current academic year. If such notice is not received, the Agreement shall be automatically renewed on the same terms and conditions for additional one year periods. Notice pursuant to this paragraph shall be sent to the parties as follows:

SPS:           Spokane School District No. 81  
                  ATTN: Superintendent  
                  200 North Bernard Street  
                  Spokane, WA 99201-0282

Friends:       FRIENDS OF KSPS  
                  ATTN: Executive Director  
                  3911 South Regal Street  
                  Spokane, WA 99223

**11. Waiver of Breach/Default.**

No waiver of any breach of any term of this Agreement shall be construed, nor shall be, a waiver of any other breach of this Agreement. No waiver shall be binding unless it is in writing and signed by the party waiving the breach.

**12. Severability.**

If any provision of this Agreement is determined to be invalid or ultra vires under any applicable statute or rule of law, it is to that extent to be deemed omitted and the balance of the Agreement shall remain enforceable.

**13. Mandatory Dispute Resolution Procedure.**

In the event that a dispute shall arise regarding the terms, conditions, or breach of this Agreement, the Parties shall, as a condition precedent to taking any action, mediate the dispute using the services of a mutually agreed upon independent mediator. Each party shall split the expenses of the mediator and the facility for the mediation. Each party shall otherwise pay its own expenses.

**14. Attorneys' Fees and Costs.**

In the event legal action becomes necessary to enforce or interpret the terms of this Agreement, the parties shall be required to mediate their dispute(s) prior to legal action being commenced. After mediation has occurred, the prevailing party in any legal action shall be entitled to recover reasonable attorneys' fees and costs incurred in such action, as determined by the court. In the event of any appeals from such actions, the prevailing party shall be entitled to recover its

reasonable attorneys' fees and costs incurred in such appeals, and determined by the court(s). The term "costs" shall include, in addition to statutory costs and disbursements, all costs associated with discovery depositions, expert witness fees, and out-of-pocket costs incurred by the prevailing party in the prosecution or defense of the action. For the purpose of this paragraph, the term "action" shall be deemed to include any proceeding commenced in the bankruptcy courts of the United States.

**15. Governing Law/Venue.**

The terms of this Agreement shall be governed by the laws of the State of Washington. In the event that legal action is commenced to resolve a dispute arising out of this Agreement, the venue of such action shall be in Spokane County, Washington.

**16. Authority to Sign and Obligate.**

The undersigned represent and warrant that they are authorized to enter into this Agreement on behalf of the parties.

**17. Effective Date of Agreement.**

This Agreement shall not become effective unless and until it is properly executed by the parties and all filing requirements are met.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2013

SPOKANE PUBLIC SCHOOLS:

\_\_\_\_\_  
Dr. Mark Anderson  
Associate Superintendent,  
School Support Services

\_\_\_\_\_  
DATE

FRIENDS OF KSPS:

\_\_\_\_\_  
Gary A. Stokes, Executive Director

\_\_\_\_\_  
DATE

**SCHEDULE 7.1(g)(4)**

**PURCHASE AND SALE AGREEMENT  
(FOR FRIENDS CONTRACT INTEREST WITH RESPECT TO THE KSPS FACILITY)**

This Purchase and Sale Agreement ("Agreement") is entered into as of this        day of \_\_\_\_\_, 2013, by and between Spokane School District No. 81, a Washington state municipal corporation ("Buyer"), and FRIENDS OF KSPS, a Washington state nonprofit corporation ("Seller").

**RECITALS**

**WHEREAS**, Buyer and Seller entered into an Agreement dated September 8, 1993 (the "1993 Agreement") regarding the renovation and new construction to Buyer's KSPS-TV facility ("Facility");

**WHEREAS**, the 1993 Agreement provided for the joint financing and construction of the renovation and new construction to Buyer's Facility;

**WHEREAS**, the 1993 Agreement provided for the reimbursement to Seller for the value of its contribution to the renovation and new construction to Buyer's Facility should the Buyer decide to sell or use the Facility for other Buyer purposes;

**WHEREAS**, the Buyer has decided to voluntarily relinquish its operation of KSPS-TV as described in the 1993 Agreement; and

**WHEREAS**, the Buyer agrees to reimburse Seller for the value of its financial contribution to the renovation and new construction to Buyer's Facility in accordance with the 1993 Agreement.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual promises described below, the sufficiency of which is hereby acknowledged, the parties agree as follows:

**1. Parties.**

Buyer: Spokane School District No. 81  
200 North Bernard Street  
Spokane, WA 99201-0282

Seller: FRIENDS OF KSPS  
3911 South Regal Street  
Spokane, WA 99223

**2. Reimbursement With Respect to KSPS Facility.** Incident to the sale of certain assets by the Buyer to the Seller, the Buyer agrees to reimburse Seller for its contribution to the renovation and construction of the Facility as described in the 1993 Agreement.

3. **Amount of Reimbursement.** The parties agree that the Buyer shall pay to the Seller the total sum of \$1,642,500.00 for all of Seller's reimbursement rights under the 1993 Agreement. The \$1,642,500.00 due and owing Seller shall be paid in one lump sum of \$1,642,500.00 at the Closing of the asset purchase and sale referred to in section 2, above. Upon receipt of such amount, all of Seller's rights in the 1993 Agreement shall be extinguished.

4. **Taxes.** The Buyer shall pay all applicable sales tax to the Department of Revenue

5. **Binding on Successors.** The covenants, agreements and conditions herein contained shall extend to and be obligatory upon and inure to the benefit not only of the Buyer and Seller but also upon their successors and assigns.

6. **Survival.** If any provision or part thereof of this Agreement is held to be invalid or be found contrary to law, the remaining portions of this Agreement shall remain in full force and effect.

7. **Prior Agreements.** This Agreement and the terms herein shall replace and supersede all prior agreements, and any other document between the parties affecting Seller's contractual right to reimbursement under the 1993 Agreement.

8. **Notices.** Any notices to be given hereunder by either party may be affected either by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Notices delivered personally shall be deemed communicated as of actual receipt, mailed notices shall be deemed communicated as of the effective day of mailing, if prepaid. All notices shall be sent to the following address, unless actual notice in writing of a different address for notices is received by the other party:

Buyer:           Spokane School District No. 81  
                    ATTN: Associate Superintendent, School Support Services  
                    200 North Bernard Street  
                    Spokane, WA 99201-0282

Seller:           FRIENDS OF KSPS  
                    ATTN: Executive Director  
                    3911 South Regal Street  
                    Spokane, WA 99223

9. **Interpretation.** This Agreement has been submitted to the scrutiny of all parties and their counsel, if desired, and it shall be given a fair and reasonable interpretation in accordance with its words, without consideration to or weight given to its being drafted by any party or its counsel.

10. **Attorneys Fees.** In the event legal action becomes necessary to enforce or interpret the terms of this Agreement, the prevailing party in any legal action shall be entitled to recover reasonable attorneys' fees and costs incurred in such action, as determined by the court. In the event of any appeals from such actions, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in such appeals, and determined by the court(s). The

term "costs" shall include, in addition to statutory costs and disbursements, all costs associated with discovery depositions, expert witness fees, and out-of-pocket costs incurred by the prevailing party in the prosecution or defense of the action. For the purpose of this paragraph, the term "action" shall be deemed to include any proceeding commenced in the bankruptcy courts of the United States.

11. **Governing Law/Venue.** The terms of this Agreement shall be governed by the laws of the state of Washington. In the event that legal action is commenced to resolve a dispute arising out of this Agreement, the venue of such action shall be in Spokane County, Washington.

12. **Seller's Authority.** Persons executing this Agreement on behalf of the Seller represent that they are authorized to do so and represent and warrant that this Agreement is a legal, valid, and binding obligation on behalf of the Seller, and is enforceable in accordance with its terms.

13. **Board Approval.** This Agreement is conditioned upon approval by the Board of Directors of Spokane School District No. 81.

14. **Asset Purchase Agreement/Lease Agreement/Services Agreement/Educational Cooperative Agreement.** This Agreement is conditioned upon Buyer and Seller's mutual execution of the Asset Purchase Agreement attached hereto as Exhibit "A", the Lease Agreement attached hereto as Exhibit "B", and the Agreement for KSPS Programming Services attached hereto as Exhibit "C", and Educational Cooperative Agreement attached hereto as Exhibit "D".

**BUYER:**

Spokane School District No. 81

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

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

Date: \_\_\_\_\_

**SELLER:**

FRIENDS OF KSPS

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

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

Date: \_\_\_\_\_

Exhibit "A"  
ASSET PURCHASE AGREEMENT

**Exhibit "B"**  
**LEASE AGREEMENT**

Exhibit "C"  
AGREEMENT FOR KSPS PROGRAMMING SERVICES

Exhibit "D"  
EDUCATIONAL COOPERATIVE AGREEMENT