

ASSET PURCHASE AGREEMENT

by and between

KQED, INC.

and

KTEH FOUNDATION

April 28, 2006

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ASSET PURCHASE AGREEMENT

This **ASSET PURCHASE AGREEMENT** (this “Agreement”), dated as of April 28, 2006, by and between **KTEH FOUNDATION**, a California non-profit corporation (“Seller”), and **KQED, INC.**, a California non-profit corporation (“Buyer”), is made and entered into with reference to the following facts:

Recitals

A. Seller is the licensee of and operates educational, non-commercial Television Stations KTEH, San Jose, California, and KCAH, Watsonville, California (collectively, the “Stations”), pursuant to licenses issued by the Federal Communications Commission (the “FCC”).

B. Seller desires to sell and transfer to Buyer, and Buyer wishes to buy and acquire, substantially all of the assets of Seller 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.

On the terms and subject to the conditions set forth in this Agreement, Seller shall sell, convey and deliver to Buyer, and Buyer shall purchase, acquire and accept, at the Closing substantially all of the assets owned or leased (to the extent of Seller’s leasehold interest) by Seller (collectively, the “Transferred Assets”), including but not limited to all of Seller’s right, title and interest in and to the assets, properties, interests and rights described in this Section 1.1. The Transferred Assets to be conveyed, transferred and assigned pursuant to this Agreement shall include the following:

- (a) all licenses and authorizations issued by the FCC for the operation of the Stations, including all Antenna Structure Registrations (the “FCC Licenses”), all of which are listed in Schedule 3.5 hereto;
- (b) all other Transferred Licenses (as hereinafter defined), all of which are listed on Schedule 3.6 hereto;
- (c) the tangible personal property owned and leased (to the extent of Seller’s leasehold interest) by Seller (the “Personal Property”), all of which is listed on Schedule 3.7 hereto, 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, and excluding any particular items of personal property specified on Schedule 3.7 as excluded;

- (d) the real property owned and leased (to the extent of Seller's leasehold interest) by Seller (the "Real Property"), all of which is listed on Schedule 3.8 hereto;
- (e) the contracts and agreements listed on Schedule 3.9 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");
- (f) the files and records of Seller, including those relating to the operations of the Stations 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
- (g) all intellectual property (including all registered and unregistered copyrights in both published works and unpublished works) owned by or licensed (to the extent of Seller's license) to Seller (the "Intellectual Property"), all of which is listed on Schedule 3.10 hereto.

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) such amount of cash as is reasonably necessary and is approved by Buyer (such approval not to be unreasonably withheld) to pay the costs and expenses of Seller incurred in connection with the transactions contemplated by this Agreement;
- (c) the corporate papers, including but not limited to minute books and tax documents, of Seller; and
- (d) any items of personal property listed on Schedule 3.7 as excluded.

1.3 **Assumption of Liabilities and Obligations.**

On the terms and subject to the conditions set forth in this Agreement, Seller shall transfer to Buyer and Buyer shall assume (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 or arising in connection with any Excluded Asset, and (iii) those expenses and taxes which are the obligation of Seller as provided in Section 6.6(b). 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.**

The sole consideration for the assignment and transfer of the Transferred Assets shall be the assumption by Buyer of the Assumed Liabilities.

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 nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of the State of California. Seller has previously delivered to Buyer true and complete copies of Seller's Articles of Incorporation and Bylaws in effect as of the date hereof and as of the Closing. 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,

instrument and document contemplated hereby (the “Related Agreements”) to which Seller is or shall be a party, 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 **Financial Information.**

(a) **Financial Statements.** Buyer has been furnished with the following (collectively, the “Financial Statements”):

(i) The audited balance sheets of Seller as of September 30, 2005 and 2004 and the audited related statements of revenues and expenses, changes in fund balances and cash flows for the years then ended (collectively, the “Year End Financials”); and

(ii) The unaudited balance sheet of Seller as of February 28, 2006 and the related unaudited income statements for the five-month period then ended (the “Interim Financials”).

(b) **Character of Financial Information.** Except as set forth in Schedule 3.3 or disclosed in the Financial Statements, (a) the Year End Financials were prepared in accordance with GAAP consistently applied throughout the period specified therein and present fairly, in all respects, the financial position and results of operations of Seller as of the date and for the period specified therein in conformity with GAAP, and (b) the Interim Financials were prepared from the books and records of Seller in conformity with Seller's past practices and procedures for the preparation of interim financial statements and are subject to year-end adjustments and present fairly, in all respects, the financial position and results of operations of Seller as of the date and for the period specified therein.

(c) **Changes.** Since September 30, 2005: Seller has not made or agreed to make any change in its methods of accounting or accounting practices; except for matters set forth in Schedule 3.3, the business of Seller has been conducted only in the ordinary course of business (except as otherwise required or permitted by the terms of this Agreement); and Seller has not:

(i) entered into any contractual obligation other than this Agreement relating to (A) the purchase or sale of assets of Seller except in the ordinary course of business, (B) any merger, consolidation or other business combination, or (C) increases in compensation of employees other than in the ordinary course of business;

(ii) settled or agreed to settle any litigation except in the ordinary course of business and not exceeding \$50,000 in payments by or on behalf of Seller or credits to any claimant;

(iii) mortgaged, pledged or subjected to any lien any of its assets other than conditional sales or similar security interests granted in connection with the lease or purchase of equipment or supplies in the ordinary course of business and liens disclosed on Schedule 3.3;

(iv) sold, leased, transferred or exchanged any property of a material value for less than the fair value thereof; or

(v) entered into any contractual obligation to do any of the foregoing actions referred to in this clause (c).

3.4 Absence of Conflicting Agreements and Required Consents.

Subject to obtaining the FCC Consent (as defined in Section 6.1) and other third party consents that may be required to assign any of the Assumed Contracts and Real Property leases to Buyer, all of which third party consents are set forth on Schedule 3.4, 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.

3.5 FCC Licenses and Authorizations; Compliance with Law.

Schedule 3.5 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 3.5. 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 Stations 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 3.5, the Stations are 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 3.5, (a) there are no applications, investigations, complaints, objections, petitions or proceedings pending or, to Seller's knowledge, threatened before the FCC relating to the Stations, 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 Stations since the dates Seller has operated the Stations have been filed in a timely manner and are substantially complete and accurate, (c) the conduct of the business and operations of the Stations are in compliance in all respects with the FCC's radiation standards applicable to the Stations and (d) the conduct of the business and operations of the Stations and the Transferred Assets are in compliance in all material respects with all applicable engineering standards required to be met under applicable FCC Rules.

3.6 Licenses and Authorizations other than FCC Licenses; Compliance with Laws.

Schedule 3.6 is a true and complete list of all current governmental licenses, permits, approvals, franchises and authorizations, other than FCC Licenses, issued by any governmental entity to be transferred to Buyer hereunder (collectively, the "Transferred Licenses"). Seller is the authorized legal holder of each such Transferred License, each of which is in full force and effect for the remainder of its terms as set forth on Schedule 3.6, and each of which is unimpaired by any act of Seller. The Transferred Licenses and 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 Stations, as presently operated and conducted. None of the Transferred Licenses is subject to any restriction or condition which would limit the conduct of the business or operations of the Stations as presently operated or conducted. The Stations are operating in compliance in all material respects with all terms and conditions of the Transferred Licenses, and all applicable laws, rule, regulations and policies of any other governmental entities with jurisdiction over the operations of the Stations, Seller, or the Transferred Assets. Except as set forth on Schedule 3.6, there are (a) no applications, investigations, complaints, petitions or proceedings pending or, to Seller's knowledge, threatened any governmental or regulatory authority other than the FCC relating to the business or operations of Seller, including operation of the Stations, (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 Stations 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.

3.7 Personal Property.

Schedule 3.7 is a true and complete list of all Personal Property owned or leased by Seller and includes all Personal Property used or useful in connection with the operation of the Stations. Seller has good title to all items of Personal Property. Except as noted on Schedule 3.7, 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, except for liens for current taxes and other governmental charges not yet due and payable. The Personal Property is, and on the Closing Date will be, available for immediate use by Buyer in the conduct of the business

and operations of the Stations 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 Stations to be operated by Buyer in all material respects as they are 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 Stations in compliance with the terms of the FCC Licenses and the rules and regulations of the FCC in all material respects.

3.8 **Real Property.**

- (a) Schedule 3.8 contains a complete and accurate description of all Real Property owned or leased by Seller and used in the operation of the Stations. The Real Property is, and on the Closing Date will be, available for immediate use by Buyer in the conduct of the business and operations of the Stations in all material respects as now being operated and conducted, and will permit the Stations to be operated by Buyer in all material respects as they are now being operated and conducted.
- (b) To Seller's knowledge, (i) all appurtenances to and improvements on the Real Property that are used in the operations of the Stations are in good operating condition and repair, ordinary wear and tear excepted, are constructed in material compliance with all local, state and federal regulations and laws, and have been maintained by Seller in a manner consistent with its past practices and generally accepted good engineering practices; (ii) except as shown set forth on Schedule 3.8, none of the buildings, structures, improvements or fixtures constructed on the Real Property, including all towers, guy wires and guy anchors and ground radials, encroach upon adjoining real property, and all such buildings, structures, improvements and fixtures are constructed and are operated and used in conformance with all "set back" lines, easements, covenants, restrictions, real estate leases, and all applicable building, fire, zoning, health and safety laws and codes; (iii) no utility lines serving the Real Property pass over the lands of a third party except wham appropriate easements have been obtained; and (iv) all of the buildings, structures, towers, improvements and fixtures comprising part of the Real Property have adequate rights of ingress and egress, utility service for water and sewer, telephone, electric and/or gas, and sanitary service for the conduct of the business and operations of the Stations as presently conducted. There is no pending or, to Seller's knowledge, threatened condemnation or other legal proceeding or action of any kind relating to the Real Property and/or title thereto.
- (c) Except as described on Schedule 3.8, Seller has not, nor to Seller's knowledge has any previous owner, tenant, occupant or user of the Real Property, or any other person, engaged in or permitted any activities upon, or any use or occupancy of the Real Property or any portion thereof, for

the purpose of or in any way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Substance; nor, are there presently deposited, stored or otherwise located on, under, in or about the Real Property any (i) Hazardous Substance; (ii) asbestos or asbestos containing materials; (iii) radon gas in excess of federally recommended standards; (iv) underground storage tanks; (v) items or equipment containing polychlorinated biphenyls (“PCBs”); (vi) stored, spilled or leaked petroleum products; or (vii) accumulation of rubbish, debris or other solid waste that is uncontainerized, nor, is any such property the subject of governmental action or liability imposed because of the past release, threat of release, discharge, storage, treatment, generation or disposal of such substances. Seller has received no notice of any environmental investigation or remediation action relating to the Real Property or, to Seller’s knowledge, is any such investigation or action proposed, threatened or anticipated, not, to Seller’s knowledge, does any environmental condition exist with regard to such property which could result In liability for an owner or operator of the property that is reasonably likely to be materially adverse to Buyer.

- (d) To Seller’s knowledge, there is no adverse geological or soil condition affecting the Real Property.
- (e) Seller has delivered to Buyer true, complete and correct copies of any title policies and surveys of the Real Property which are in Seller’s possession or under its control.

3.9 **Assumed Contracts.**

Schedule 3.9 lists and describes all of the Assumed Contracts, including all leases of Personal Property and Real Property. Seller has provided Buyer with a true, complete and correct copy of each Assumed Contract. The Assumed Contracts constitute all of the contracts, leases and agreements (whether oral or written) to which Seller is a party, including all which are applicable to or affect the conduct of the operations of the Stations as presently operated by Seller. 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 which 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 consent is listed on Schedule 3.9, 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. Those Assumed Contracts that Buyer and Seller have agreed are material to the operation of the Stations and the valid

assignment of which is a condition to the consummation of the transactions contemplated herein (the “Material Contracts”) are so designated on Schedule 3.9.

3.10 **Intangible Property.**

- (a) The Intellectual Property consists of the call letters “KTEH” and “KCAH,” the FCC Licenses listed on Schedule 3.5, the Transferred Licenses listed on Schedule 3.6, the registered copyrights listed on Schedule 3.10, and third party software subject to a “shrink-wrap” or “click-through” license agreement. Except for the Intellectual Property, Seller does not own or otherwise have any interest in any copyrights, registered trademarks, trade names, licenses, patents, permits, privileges, computer software and other similar intangible property rights and interests. The Intangible Property is all that is necessary for the operation of the Stations and Seller’s other business activities.
- (b) All of the registered copyrights listed on Schedule 3.10 are currently in compliance with applicable regulations and laws. None of the subject matter of any of the copyrights infringes or is alleged to infringe any copyright of any third party or is a derivative work based upon the work of any third party. None of the copyrights has been challenged or, to Seller’s knowledge, threatened in any way.

3.11 **Transferred Assets.**

The Transferred Assets constitute all of the assets, properties and rights (other than the Excluded Assets) owned, held or leased by Seller. No other assets, properties or rights are used by Seller or are necessary for the operation of the Stations and Seller’s other business activities. The Transferred Assets will permit the Stations to be operated by Buyer following the Closing in all material respects as they are currently being operated and conducted.

3.12 **Insurance.**

All of the Real Property and Personal Property are insured against loss or damage in amounts generally customary in the broadcast industry or consistent with the past practices of Seller, and such insurance will be maintained in effect by Seller until the Closing.

3.13 **Employee Information.**

Except as set forth on Schedule 3.13, Seller does not maintain, is not required to contribute to and has no liabilities with respect to any pension, annuity, retirement, savings, profit sharing or deferred compensation plan or agreement, or any retainer, consultant, bonus, group insurance, welfare, health and disability plans, fringe benefit or other incentive or benefit contract, plan or arrangement applicable to the employees, officers, directors or consultants (or former employees, officers, directors or consultants) of Seller or the Stations (“Employee Benefit Plans”). There are no collective bargaining or other labor agreements with respect to employees of Seller. Schedule 3.13 contains a description of vacation, severance pay, sick leave policies, bonus, incentive compensation and group insurance plans for the benefit of employees of Seller.

Seller shall retain all liabilities, responsibilities, obligations and commitments relating to compensation or employee benefits, including those under any Employee Benefit Plan, payable to or on account of any current or former employee of Seller. Seller has complied in all material respects with all applicable laws and rules relating to the employment of labor, including those relating to wages, hours, collective bargaining and the payment of social security and similar taxes.

3.14 **Claims; Legal Actions.**

Except as set forth on Schedule 3.14 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, 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 Seller, or which would have a material adverse affect on Seller's ability to perform its obligations in accordance with the terms of this Agreement or any Related Agreement, and Seller has no knowledge of any facts that would result in any such proceeding.

3.15 **Taxes.**

Seller 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 required to be withheld by Seller. 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.

3.16 **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 survive the Closing for the period set forth herein:

4.1 **Existence and Power.**

Buyer is a nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of the State of California with all requisite corporate power under its articles of incorporation and bylaws 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 Stations. On the Closing Date, Buyer will be qualified to do business and in good standing in the State of California.

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 the FCC Consent and any required third party consents to the assignment by Seller to Buyer of the Assumed Contracts and the Real Property leases, 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 Stations.

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 Stations under the Communications Act of 1934, as amended, and the FCC 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 withhold, between the date hereof and the Closing, Seller shall:

- (a) operate the Stations 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 Stations 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 Stations in compliance in all material respects with all other laws, regulations, rules and orders applicable to the Stations 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(c) 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 general casualty 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 Stations 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 Stations in excess of eighteen continuous hours at any one time or eighteen 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 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 of any nature whatsoever 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) not make any material changes in the broadcast hours or in the format of the Stations, or make any other material change in the programming policies of the Stations;
- (n) promptly after the execution of this Agreement, give written notice to the Attorney General of the State of California concerning the transaction contemplated by this Agreement, as required by Section 5913 of the California Corporations Code, unless the Attorney General has given Seller a written waiver of such section as to such transaction; and
- (o) 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 Stations, materially delay obtaining the FCC Consent, result in its disqualification under the rules of the FCC to be the licensee of the Stations 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.

5.4 **Third-Party Consents.**

Subject to Section 7.1(e), 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 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. 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.

6.2 **ABAG Bonds.**

In 2003, the ABAG Finance Authority for Nonprofit Corporations issued \$10,000,000 of revenue bonds (the "ABAG Bonds") and loaned the proceeds thereof to Seller. In connection therewith, Seller entered into a Loan Agreement with the Finance Authority, a Letter of Credit and Reimbursement Agreement with Bank of America, N.A., and a Guaranty Reimbursement Agreement with The David and Lucile Packard Foundation; all such agreements are Material Contracts, whether or not listed on Schedule 3.9. Pursuant to the Guaranty Reimbursement Agreement, the Packard Foundation has a lien on certain assets of Seller. It shall be a condition to the consummation of the transactions contemplated herein that the consents of the Finance Authority, the Trustee for the ABAG Bonds, Bank of America and the Packard Foundation are obtained, and the parties shall diligently seek to obtain such consents.

6.3 **Serving Needs of San Jose.**

For at least three (3) years following the Closing, Buyer will explore how to better serve the public broadcasting needs of, and to maintain a local community presence in, the San Jose area. Towards that end, Buyer will endeavor to produce television programs in the San Jose areas. The parties recognize that the needs of the San Jose community may change over time, and as such the presence of Buyer in the San Jose area may be adjusted during that time.

6.4 **Board Representation.**

As of the date hereof, there are two vacancies on Buyer's board of directors. At the first meeting of the Buyer's board of directors following the Closing, Buyer's board of directors shall appoint two members of Seller's board of directors (such members to be designated by Seller as of the Closing) to fill such vacancies. In addition, if there is a third vacancy on Buyer's board of directors, a third member of Seller's board of directors will be appointed to fill such vacancy. If there is not a third vacancy so filled, then at the regular election by members of Buyer's directors in Fall 2006, Buyer shall include in the board of directors' slate of nominees a third member of Seller's board of directors (such member to be designated by Seller as of the Closing). If the term of any member of Buyer's board of directors appointed pursuant to this Section 6.4 expires at the end of 2006, the appointed director shall be included in the board of directors' slate of nominees. Seller understands that the directors of Buyer are elected by the public members of Buyer, who can also submit nominations; as such, the election of such third director cannot be assured if the number of nominees exceeds the number of board openings. There is no assurance that any persons appointed or elected to Buyer's board of directors will be nominated or re-elected upon the termination of their respective terms.

6.5 **Employees.**

- (a) Buyer will offer employment to Seller's employees, on substantially the same terms as their employment with Seller or as otherwise required pursuant to Buyer's agreements with labor unions representing its employees. All such employees will be at will unless otherwise required by Buyer's labor contracts. Notwithstanding the foregoing, Seller understands that Buyer intends to consolidate the master control facilities

of Stations KQED, KTEH and KCAH and may not offer employment to Seller's employees responsible for Seller's master control facilities. Nothing in this Agreement shall be construed to require Buyer to assign any employee of Seller hired by Buyer to a position in San Jose.

- (b) Buyer shall, if and to the extent permissible under its existing benefit plans, give credit for purposes of eligibility and vesting to employees for their years of service at Seller. Seller shall be solely responsible for payment of any severance pay or other amounts payable to any employees who do not accept employment with Buyer. To the extent possible under the terms of Seller's and Buyer's retirement plans and not unduly burdensome, Buyer will allow Seller's employees hired by it to transfer balances in Seller's retirement plans to Buyer's retirement plan.

6.6 Expenses; Taxes.

- (a) Except as provided for in this Section 6.4, 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 real and personal property sales and transfer taxes incurred in connection with the transactions contemplated hereby. Buyer shall pay title insurance premiums in connection with the transfer of any Real Property.
- (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 on or before the Closing Date.

6.7 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 after the Closing.
- (b) In the event of any damage or destruction of the Transferred Assets which prevents signal transmission by the Stations in the normal and usual manner and Seller cannot or does not restore or replace the Transferred Assets before the Closing so that the Stations are operating in accordance with good engineering standards, 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 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; or, (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. 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.

6.8 **No Brokers.**

Each of Seller and Buyer represent 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. Each of Seller and Buyer 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 the conduct of Seller or Buyer, respectively.

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 of such license which has a material adverse effect on the Stations or the business or operations of the Stations.

- (d) **FCC Consent.** The FCC Consent has been obtained and, at the option of Buyer, such consent has become final (as that term is defined in Section 8.1), unless finality is waived by Buyer. Seller shall have filed promptly after the execution of this Agreement such application(s) with the FCC as appropriate to bring the FCC License for Station KCAH into compliance with FCC Rules.
- (e) **Third Party Consents.** All Material Contracts (as defined in Section 3.9 and identified on Schedule 3.9) shall be in full force and effect on the Closing Date. Seller shall have obtained and shall have delivered to Buyer all third-party consents to the assignment of the Material Contracts, including but not limited to the consents required in connection with the ABAG Bonds.
- (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 which: (i) renders it unlawful, as of the Closing Date, to close 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) **Deliveries.** Seller shall have made or stand willing and able to make all the deliveries to Buyer set forth in Section 8.2.

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,

any party hereto which: (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 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) **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 Arnold & Porter LLC at 90 New Montgomery Street, San Francisco, CA, unless another mutually agreeable location is chosen, on the fifth (5th) business day following the date upon which the FCC Consent is final, provided, that Buyer shall have the option to waive the necessity of a final FCC order, in which event Closing shall occur on the fifth (5th) business day following the date upon which Buyer notifies Seller that it is waiving finality (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, appeal or stay. it is not subject to any stay. Closing shall be effective at 3:00 am Pacific Time on the day after 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 which shall be sufficient to vest good and marketable title to the Transferred Assets in the name of Buyer free and clear of any claims, liabilities, mortgages, liens, pledges, conditions, charges, or encumbrances of any nature whatsoever, except for taxes not yet due and payable and recorded easements, rights of way, set backs and similar restrictions, none of which individually or collectively impair the use and operations of the Stations as presently operated, and except for the lien described in Section 6.2;
- (b) **Officer’s Certificate.** A certificate, dated as of the Closing Date and executed by a duly authorized officer 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 corporate authority to execute this Agreement, the Related Agreements and the closing documents contemplated herein;

- (c) **Corporate Resolutions.** Certified resolutions of Seller 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 California dated not more than fifteen (15) days prior to the Closing certifying that Seller is in good standing;
- (e) **Opinion of Counsel.** An opinion or opinions of counsel for Seller with respect to such matters as reasonably requested by Buyer;
- (f) **Third-Party Consents.** All third-party consents to the assignment of the Material Contracts; and
- (g) **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) **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;
- (b) **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;

- (c) **Corporate 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 California dated not more than fifteen (15) days prior to the Closing certifying that Buyer is in good standing; and
- (e) **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 OR BREACH**

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;
- (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 6.5 (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 two (2) business days' prior written notice, if the other party defaults in its obligation to complete the Closing.

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), or
- (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 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 and agree that the Transferred Assets and FCC Licenses are distinct and unique assets which cannot be replicated and that damages are 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, its affiliates, 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 Stations or ownership of the Transferred Assets at or 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 other Transferred License or any of the Assumed Contracts prior to the Closing;
- (d) all Retained Liabilities, including but not limited to all accounts payable for the operation of the Stations between the date hereof and the Closing, and any contracts, agreements, leases and understandings that are not Assumed Contracts; and
- (e) all Environmental Liabilities arising from any acts or omissions of Seller to the extent that such Environmental Liabilities are based upon, or otherwise relate to, any Condition in, at, on, under, a part of, involving or otherwise related to the leased Real Property, which Condition exists at or prior to the Closing.

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

Buyer shall indemnify and hold harmless Seller, its affiliates, officers, directors, 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 Stations 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 Assumed Liabilities, including without limitation all liabilities under the Assumed Contracts, the FCC Licenses and other Transferred Licenses arising 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 survive the Closing for a period of twelve (12) months, at which time the same shall expire (except for claims asserted during such twelve (12) month period); provided, however, that the representations and warranties of Seller in Section 3.15 (Taxes) hereof and Buyer's indemnification rights pursuant to this Section 10 with respect thereto shall survive until the expiration of the applicable statute of limitations, the representations and warranties of Seller in Section 3.8(c) hereof and Buyer's indemnification rights pursuant to this Section 10 with respect thereto shall survive for a period of ten (10) years following the Closing, and the representations and warranties of Seller in the first three sentences of Section 3.7 (Title to Personal Property) hereof and Buyer's indemnification rights pursuant to this Section 10 with respect thereto shall survive indefinitely and not expire. No claim may be brought under such representations and warranties unless written notice describing in reasonable detail the nature and basis of such claim is given on or prior to the last day of the survival period. In the event such a notice is given timely, the right to indemnification with respect thereto shall survive until such claim is finally resolved and any obligations with respect thereto are fully satisfied.

10.4 **Conduct of Proceedings.**

If any claim, action, suit or proceeding covered by the foregoing agreements to indemnify and hold harmless shall arise (an "Indemnification Proceeding"), the party who seeks indemnification (the "Indemnified Party") shall give written notice thereof to the other party (the "Indemnitor") promptly after the Indemnified Party learns of the existence of such Indemnification Proceeding; provided, however, that the Indemnified Party's failure to give the Indemnitor such notice shall not bar the Indemnified Party's right to indemnification unless and only to the extent that such failure has prejudiced the Indemnitor's ability to defend the Indemnification Proceeding. The Indemnitor shall have the right to employ counsel reasonably acceptable to the Indemnified Party to defend against any such Indemnification Proceeding, or to compromise, settle or otherwise dispose of the same, if the Indemnitor deems it advisable to do so, all at the expense of the Indemnitor; provided that the Indemnitor shall not have the right to control the defense of any such Indemnification Proceeding unless it has acknowledged in writing its obligation to indemnify the Indemnified Party fully from all liabilities incurred as a result of such Indemnification Proceeding; provided further that the Indemnitor shall not settle, or consent to entry of any judgment in any Indemnification Proceeding without obtaining a release of the Indemnified Party from all liability in respect of the Claims underlying such Indemnification Proceeding. If the Indemnified Party does not consent to a bona fide offer of settlement made by a third party and the settlement involves only the payment of money, then the Indemnitor may, in lieu of a payment of that amount to such third party, pay that amount to the Indemnified Party. After such payment to the Indemnified Party, the Indemnitor shall have no further liability with respect to that claim or Indemnification Proceeding and the Indemnified Party shall assume full responsibility for the defense, payment or settlement of such claim or

Indemnification Proceeding. If the Indemnitor fails to acknowledge in writing its obligation to defend against or settle such Indemnification Proceeding within thirty (30) days after receiving notice thereof from the Indemnified Party (or such shorter time specified in the notice as the circumstances of the matter may dictate), the Indemnified Party shall be free to dispose of the matter, at the expense of the Indemnitor, in any way in which the Indemnified Party deems to be in its best interest.

10.5 **Partial Waiver of Certain Damages.**

Each party hereto waives as against the other party any claim to consequential, special, exemplary or punitive damages except to the extent consequential, special, exemplary or punitive damages are awarded to a third party against an Indemnified Party in circumstances in which such Indemnified Party is entitled to indemnification hereunder.

10.6 **Indemnified Parties.**

The obligation to indemnify any affiliate, officer, director, member, employee or agent of either Seller or Buyer, as the case may be, in accordance with this Section 10 may be enforced exclusively by Seller or Buyer, respectively, and nothing herein shall be construed to grant such affiliate, officer, director, member, employee or agent any individual rights, remedies, obligations or liabilities with respect to the parties to this Agreement. The parties to this Agreement may amend or modify this Agreement in any respect without the consent of any such affiliate, officer, director, member, employee or agent.

10.7 **Definitions.**

In addition to the terms defined in the text of this Agreement, the following terms shall have the following meanings:

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601, et seq.), as amended, and all rules, regulations, standards, orders, guidelines, directives and publications issued thereunder.

“Condition” means any condition with respect to the Real Property that results in or otherwise relates to any Environmental Liability,

“Environmental Laws” means all Laws (including any future laws) that address, are related to, or are otherwise concerned with environmental, health or safety issues (including occupational safety and health).

“Environmental Liabilities” means any obligations or liabilities (including any notices, claims, complaints, suits or other assertions of obligations or liabilities) that are:

- (a) related to environmental, health or safety issues (including on-site or off site contamination by Hazardous Substances of surface or subsurface soil or water, and occupational safety and health); and

- (b) based upon or related to (A) any provision of past, present or future Environmental Law (including CERCLA and RCRA) or common law, or (B) any order, consent, decree, writ, injunction or judgment issued or otherwise imposed by any governmental authority.

The term “Environmental Liabilities” includes (without limitation):(A) fines, penalties, judgments, awards, settlements, losses, damages (including foreseeable and unforeseeable consequential damages), costs, fees (including attorneys' and consultants' fees), expenses and disbursements; (B) defense and other responses to any administrative or judicial action (including notices, claims, complaints, suits and other assertions of liability); and (C) financial responsibility for (1) cleanup costs and injunctive relief, including any Removal, Remedial or other Response actions, and natural resource damages, and (2) any other compliance or remedial measures.

“Hazardous Substances” includes any “hazardous substance” and any “pollutant or contaminant” as those terms are defined in CERCLA; any “hazardous waste” as that term is defined in RCRA; and any “hazardous material” as that term is defined in the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.), as amended (including as those terms are further defined, construed, or otherwise used in rules, regulations, standards, orders, guidelines, directives, and publications issued pursuant to, or otherwise in implementation of, said Laws); and including without limitation any petroleum product or byproduct, solvent, flammable or explosive material, radioactive material, asbestos, lead paint, polychlorinated biphenyls (PCBs), dioxins, dibenzofurans, heavy metals, and radon gas; and including any other substance or material that is reasonably determined to present a threat, hazard or risk to human health or the environment.

“Laws” means all current and future federal, state and local laws, statutes, rules, regulations, ordinances, proclamations, codes, requirements, permits, rules of common law, standards, directives, guidelines, and the like, including any judicial and administrative interpretations thereof, of any governmental authority, including all judicial and administrative orders, consents, decrees, writs, injunctions and judgments.

“RCRA” means the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), as amended, and all rules, regulations, standards, orders, guidelines, directives, and publications issued thereunder.

“Removal,” “Remedial” and “Response” actions include the types of activities covered by CERCLA, RCRA, and other comparable Environmental Laws, and whether such activities are those which might be taken by a government entity or those which a government entity or any other person might seek to require of waste generators, handlers, distributors, processors, users, storers, treaters, owners, operators, transporters, recyclers, reusers, disposers, or other persons under “removal,” “remedial,” or other “response” actions.

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 California with venue lying in the City and County of San Francisco.

SECTION 12
MISCELLANEOUS

12.1 **Governing Law.**

This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of California, but without regard to the choice of laws provisions thereof.

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, supplemented or modified 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, supplement or modification is sought. If any Schedules are not attached to this Agreement at the time it is signed by the parties, as soon as possible thereafter Seller shall prepare such missing

Schedule(s), which shall be subject to approval by Buyer. Only if and when approved by Buyer shall such Schedule(s) be attached to this Agreement. Buyer shall not be obligated to consummate the transactions contemplated herein until all Schedules are prepared, approved by Buyer, and attached hereto.

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, which consent shall not be withheld unreasonably, 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 does 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: KTEH Foundation
1585 Schallenberger Road
San Jose, CA 95131-2434

with copy to: Schwartz, Woods & Miller
Suite 610 - The Lion Building
1233 20th Street, N.W.
Washington, D.C. 20036-7322
Attn: Lawrence M. Miller, Esq.

To Buyer: Mr. Jeff Clarke
President & Chief Executive Officer
KQED, Inc.
2601 Mariposa Street
San Francisco, CA 94110

with copy to: Margaret Berry, Esq.
General Counsel & Corporate Secretary
KQED, Inc.
2601 Mariposa Street
San Francisco, CA 94110

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.

Any party may, at its election, waive in writing any or all of the conditions contained herein to which its obligations are subject. Waiver by any 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.

12.10 Publicity.

Except as may be required by applicable law, no press release or public announcements (or announcement to clients or employees before the Closing Date) 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 have executed this Agreement as of the date first above written.

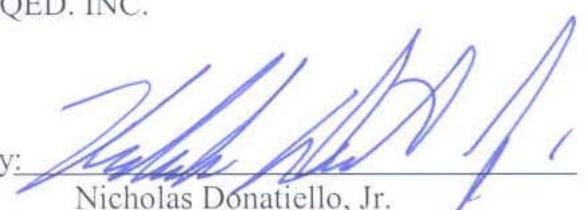
KTEH FOUNDATION

By: _____


John M. Soprato
Chair, KTEH Board of Directors

KQED. INC.

By: _____


Nicholas Donatiello, Jr.
Chair, KQED Board of Directors:



SCHEDULES

- 3.3 Financial Information
- 3.4 Required Consents
- 3.5 FCC Licenses
- 3.6 Transferred Licenses
- 3.7 Personal Property
- 3.8 Real Property
- 3.9 Assumed Contracts
- 3.10 Intellectual Property
- 3.13 Employee Benefits
- 3.14 Claims; Litigation

FCC LICENSES AND AUTHORIZATIONS

STATION	LICENSES AND AUTHORIZATIONS	GRANT DATE	EXPIRATION DATE
KTEH(TV) Facility ID 35663 San Jose, CA	BLET-20030409AAS	3/28/2005	12/1/2006
KTEH-DT Facility ID 35663 <u>San Jose, CA</u>	BLEDT-20040826AAR	3/28/2005	12/1/2006
<u>Associated Auxiliary Stations:</u>			12/1/2006
RPU KFE704 RPU KFE724 RPU KZH837 RPU KP2394 RPU KS2170			
ICR WBK244 ICR WCT817 ICR WCT818 ICR WLI563 ICR WLI564 ICR WQDF543 ICR WQDF544 ICR WQDF556 ICR WQDF560			
STL WBK246 STL WGZ534 STL WPTA486 STL WPWH568			
<u>Auxiliary Application</u>			
New STL, File No. 252823, pending.			
Earth Station KE97	SES-RWL-20000929-01817	10/12/2000	12/1/2010

KCAH(TV) Facility ID 8214 Watsonville, CA	BLET-20030728AFA	3/15/2005	12/1/2006
KCAH-DT Facility ID 8214 <u>Watsonville, CA</u>	BLEDT-20050121AAZ	3/15/2005	12/1/2006
<u>Associated Auxiliary Stations:</u>			12/1/2006
STL WPSZ944 STL WPWH567			