

## ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT, dated as of November 30<sup>th</sup>, 2006 (this "Agreement"), by and between MONTANA STATE UNIVERSITY - BILLINGS ("Seller"), and EDUCATIONAL MEDIA FOUNDATION, a California non-profit corporation ("Buyer").

### WITNESSETH:

WHEREAS, Seller is the licensee of radio station KDMN(FM) (formerly KYPR(FM)), Gillette, Wyoming (Channel 205, 88.9 MHz) (the "Station"), pursuant to authorizations (the "FCC Authorizations") issued by the Federal Communications Commission (the "FCC"); and

WHEREAS, on the terms and conditions described herein, Seller desires to sell and Buyer desires to acquire certain of the assets used or useful in connection with the operation of the Station.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

#### 1. Sale of Assets.

(a) On the Closing Date (as hereinafter defined), Seller shall sell, assign and transfer to Buyer, and Buyer shall purchase and assume from Seller, the assets, properties, interests and rights of Seller which are described below and listed on schedules to this Agreement (the "Assets");

(i) The antenna and coaxial transmission cable used in the conduct of the operation of the Station (the "Tangible Personal Property"), as set forth on Schedule 1 hereto;

(ii) The FCC Authorizations, issued by the FCC to Seller in connection with the conduct of the business and the full on-air operations of the Station, listed on Schedule 2 hereto;

(b) The Assets shall be transferred by Seller to Buyer free and clear of all debts, security interests, mortgages, trusts, claims, pledges, conditional sales agreements and other liens, liabilities and encumbrances of every kind and nature ("Liens"), other than for taxes not yet due and payable ("Permitted Liens"). Buyer is not agreeing to, and shall not, assume any liability, obligation, undertaking, expense or agreement of Seller of any kind, absolute or contingent, known or unknown.

(c) The following assets and obligations shall be retained by Seller and shall not be sold, assigned or transferred to or assumed by Buyer (the "Excluded Assets");

(i) All broadcast equipment used in connection with the Station not listed on Schedule 1 hereto.

2. **Purchase Price.**

(a) Upon the terms and subject to the conditions contained in this Agreement, and in consideration of the sale of the Assets, on the Closing Date Buyer shall pay to Seller the aggregate sum of Fifty-Five Thousand Dollars (\$55,000) (the "Purchase Price") by wire transfer of immediately available funds

(b) Concurrently with the execution of this Agreement, Buyer has delivered to Davis Wright Tremaine, LLP (the "Escrow Agent") the sum of Two Thousand Seven Hundred Fifty Dollars (\$2,750.00) to be held as an earnest money deposit (the "Earnest Money Deposit") pursuant to an Escrow Agreement (the "Escrow Agreement") of even date herewith. The Earnest Money Deposit shall be paid to Seller as partial payment of the cash Purchase Price due at Closing to Seller, or shall otherwise be made available to Seller or released to Buyer in accordance with the provisions of this Agreement.

3. **FCC Consent; Assignment Application.**

(a) Buyer and Seller shall execute, file and vigorously prosecute an application with the FCC (the "Assignment Application") requesting its consent to the assignment, from Seller to Buyer, of the FCC Authorizations (the "FCC Consent") at a date not later than five (5) business days after the execution of this Agreement. Buyer and Seller shall take all reasonable steps to cooperate with each other and with the FCC to secure such FCC Consent without delay, and to promptly consummate this Agreement in full. Each party shall be responsible for all of its own costs with respect thereto.

(b) Seller hereby consents to and agrees to cooperate with Buyer in connection with the filing of a request by Buyer for a waiver of the FCC's "main studio" rules, such waiver to be effective on or after the Closing Date. Such request shall be made and prosecution thereof shall be conducted solely at Buyer's expense. Buyer agrees that receipt of a main studio waiver shall not be a precondition to Closing.

4. **Closing Date; Closing Place.** The closing (the "Closing") of the transactions contemplated by this Agreement shall occur ten (10) days following the date on which the FCC Consent shall have become a Final Order (as hereinafter defined) (the "Closing Date") and the other conditions to closing set forth in Section 8 have either been waived or satisfied. For purposes of this Agreement, the term "Final Order" means action by the FCC consenting to an application that is not reversed, stayed, enjoined, set aside, annulled or suspended, and with respect to which action no timely request for stay, petition for rehearing or appeal is pending, and as to which the time for filing any such request, petition or appeal or reconsideration by the FCC on its own motion has expired. The Closing shall be held at the offices of Buyer's counsel or conducted by an exchange of documents by overnight delivery and wire transfer of funds, as the Parties may agree.

5. **Representations and Warranties of Seller.** Seller hereby makes the following representations and warranties to Buyer:

(a) Seller is a public institution of higher education, duly organized, validly existing and in good standing under the laws of the State of Montana and is authorized to do

business as a foreign entity in Wyoming. Seller has the power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by Seller and no other proceedings on the part of Seller are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement by Seller will not require the consent or approval of any governmental authority, lending institution or other third party other than the FCC Consent.

(b) The FCC Authorizations are in full force and effect, unimpaired by any act or omission of Seller. Seller lawfully holds the FCC Authorizations listed on Schedule 1, which is not subject to any restrictions or conditions that would limit in any material respect the operations of the Station. There is not now pending or, to Seller's knowledge, threatened any action by or before the FCC to revoke, cancel, rescind, modify or refuse to renew the FCC Authorizations, and Seller has not received any notice of and has no knowledge of any pending, issued or outstanding order by or before the FCC, or of any investigation, order to show cause, notice of violation, notice of apparent liability, notice of forfeiture, or material complaint against either the Station or Seller. On the Closing Date, Seller shall have and convey to Buyer good and marketable title to the Tangible Personal Property. Buyer acknowledges that the Tangible Personal Property shall be transferred "as-is where-is."

(c) There is no broker or finder or other person who would have any valid claim for a commission or brokerage in connection with this Agreement or the transaction contemplated hereby as a result of any agreement, understanding or action by Seller.

(d) No representation or warranty made by Seller in this Agreement, and no statement made in any certificate, document, exhibit or schedule furnished or to be furnished in connection with the transactions herein contemplated, contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make such representation or warranty or any such statement not misleading to Buyer.

6. **Representations and Warranties of Buyer.** Buyer hereby makes the following representations and warranties to Seller:

(a) Buyer is a non-profit corporation duly organized, validly existing and in good standing under the laws of the State of California, is authorized to do business as a foreign corporation in Wyoming, and has the requisite power and authority to own, lease and operate its properties and to carry on the business of the Station as now being conducted

(b) Buyer has the power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by Buyer and no other proceedings on the part of Buyer are necessary to authorize this Agreement or to consummate the transactions contemplated hereby.

(c) Buyer is legally, financially and technically qualified to acquire and become the licensee of the Station.

(d) No representation or warranty made by Buyer in this Agreement, and no statement made in any certificate, document, exhibit or schedule furnished or to be furnished in connection with the transactions herein contemplated, contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make such representation or warranty or any such statement not misleading to Seller to the best of Buyer's knowledge.

7. **Covenants.** Seller covenants with Buyer that, between the date hereof and the Closing Date, Seller shall act in accordance with the following:

(a) Seller will not take any action prior to the Closing which would interfere with, impede or delay the grant of the Assignment Application or which would be inconsistent with Seller's representations, warranties and/or obligations under this Agreement and will diligently prosecute the Assignment Application;

(b) Seller shall continue to operate and maintain the Station in accordance with the terms of the FCC Authorizations and in material compliance with all applicable laws and FCC rules and regulations. Seller will not permit the FCC Authorizations to expire or to be surrendered or voluntarily modified or take any action (or fail to take action) which could cause the FCC or any other governmental authority to institute proceedings for the suspension, revocation or limitation of rights under the FCC Authorizations apart from actions by the FCC generally applicable to the broadcasting industry for stations of the same class and type as authorized by the FCC Authorizations; and

8. **Conditions Precedent to Obligation to Close.**

(a) The performance of the obligations of Seller hereunder is subject to the satisfaction of each of the following express conditions precedent, unless waived in writing by Seller:

(i) Buyer shall have performed and complied in all material respects with all of the agreements, obligations and covenants required by this Agreement to be performed or complied with by Buyer prior to or as of the Closing Date;

(ii) The representations and warranties of Buyer set forth in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of the Closing Date;

(iii) The FCC Consent contemplated by this Agreement shall have been granted; and

(iv) Buyer shall have delivered to Seller, on the Closing Date, the documents required to be delivered pursuant to Section 9(b).

(b) The performance of the obligations of Buyer hereunder is subject to the satisfaction of each of the following express conditions precedent, unless waived in writing by Buyer:

(i) Seller shall have performed and complied in all material respects with all the agreements, obligations and covenants required by this Agreement to be performed or complied with by Seller prior to or as of the Closing Date;

(ii) The representations and warranties of Seller set forth in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of the Closing Date;

(iii) The FCC Consent contemplated by this Agreement shall have become a Final Order;

(iv) The FCC Authorizations shall be in full force and effect and there shall be no proceedings pending before the FCC to revoke, cancel, rescind, or modify any of such FCC Authorizations;

(v) On or before the Closing Date, Buyer shall have successfully negotiated and executed a tower lease agreement for the Station, with Alpha Communications Tower at Antelope Butte; and

(vi) Seller shall have delivered to Buyer, on the Closing Date, the documents required to be delivered pursuant to Section 9(a).

9. **Closing Deliveries.**

(a) At the Closing, Seller will deliver to Buyer and Buyer will deliver to Seller the following:

(i) A Bill of Sale;

(ii) An Assignment and Assumption of FCC Authorizations;

(iii) Seller shall deliver to Buyer a letter from Seller's Chancellor authorizing and approving the execution and deliver of this Agreement and authorizing the consummation of the transactions contemplated hereby and thereby;

(iv) A joint notice to the Escrow Agent;

(v) Buyer shall deliver to Seller the payments to be made pursuant to Section 2(a) hereof; and

(vi) Such other documents, instruments and agreements necessary to consummate the transactions contemplated by this Agreement or as each party shall reasonably request.

10. **Indemnification.**

(a) The several representations and warranties of Seller and Buyer contained in or made pursuant to this Agreement shall expire on the date that is six (6) months after the

Closing Date. Each party agrees to indemnify the other for any post-closing breach of such representations, warranties and covenants, provided that, Seller shall indemnify to the extent permitted by Montana law and to the extent that sovereign immunity may have been waived.

11. **Termination.**

(a) This Agreement may be terminated by either Buyer or Seller by mutual written consent of the parties hereto, or: (i) if, on or prior to the Closing Date, the other party breaches any of its material obligations contained herein, and such breach is not cured by the earlier of the Closing Date or thirty (30) days after receipt of the notice of breach from the non-breaching party; or (ii) if the Assignment Application is denied by the FCC and such denial shall have become a Final Order; or (iii) if there shall be in effect any judgment, final decree or order that would prevent or make unlawful the Closing of this Agreement; or (iv) if the Closing has not occurred within twelve (12) months after the date hereof.

(b) Upon a termination of this Agreement by Seller due to a breach by Buyer of any of its material obligations under this Agreement, Seller's sole remedy shall be delivery of the Earnest Money Deposit, including all interest earned thereon, from the Escrow Agent, as liquidated damages. Seller agrees and acknowledges that in the event of Seller's failure to perform its obligation to consummate the transaction contemplated hereby, Buyer shall be entitled to specific performance of the terms of this Agreement and of Seller's obligation to consummate the transaction contemplated hereby.

12. **Notices.** All notices, elections and other communications permitted or required under this Agreement shall be in writing and shall be deemed effectively given or delivered upon personal delivery (or refusal thereof), or twenty-four (24) hours after delivery to a courier service which guarantees overnight delivery, or five (5) days after deposit with the U.S. Post Office, by registered or certified mail, postage prepaid, and, in the case of courier or mail delivery, addressed as follows (or at such other address for a party as shall be specified by like notice):

If to Seller, to:

Montana State University – Billings  
1500 N. 30<sup>th</sup> Street  
Billings, MT 59101

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

Henry A. Solomon, Esq.  
Garvey Schubert Barer  
5<sup>th</sup> Floor  
Flour Mill Building  
1000 Potomac Street NW  
Washington, DC 20007

If to Buyer, to:

Educational Media Foundation  
5700 West Oaks Boulevard  
Rocklin, CA 95765  
Attn: Richard Jenkins, President

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

David D. Oxenford, Esq.  
Davis Wright Tremaine, LLP  
1500 K Street, NW, Suite 450  
Washington, D.C. 20005

13. **Governing Law; Venue.** This Agreement shall be construed and enforced in accordance with the laws of the State of Wyoming, without giving effect to the choice of law principles thereof.

14. **Counterparts.** This Agreement may be executed in several counterparts, each of which will be deemed to be an original but all of which together will constitute one and the same instrument. This Agreement may be executed and exchanged by facsimile or electronic mail transmission, with the same legal effect as if the signatures had appeared in original handwriting on the same physical document.

15. **Expenses.** Except as otherwise set forth in this Section, each party hereto shall be solely responsible for all costs and expenses incurred by it in connection with the negotiation, preparation and performance of and compliance with the terms of this Agreement.

16. **Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. No party may voluntarily or involuntarily assign its interest or delegate its duties under this Agreement without the prior written consent of the other party.

17. **Entire Agreement.** This Agreement, and the exhibits attached hereto, supersede all prior agreements and understandings between the parties with respect to the subject matter hereof and may not be changed or terminated orally, and no attempted change, amendment, or waiver of any of the provisions hereof shall be binding unless in writing and signed by both parties.

***\*Signatures to Follow\****

IN WITNESS WHEREOF, the parties hereto have executed this Asset Purchase Agreement as of the day and year first above written.

**Seller:**

**MONTANA STATE UNIVERSITY - BILLINGS**

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


Name: \_\_\_\_\_

Its: \_\_\_\_\_

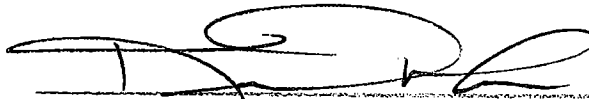
**Buyer:**

**EDUCATIONAL MEDIA FOUNDATION**

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

  
~~Richard Jenkins, President~~

Mike Novak, Vice President



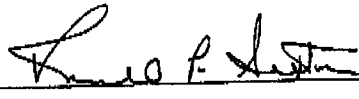
Keith Wipple, Secretary



IN WITNESS WHEREOF, the parties hereto have executed this Asset Purchase Agreement as of the day and year first above written.

**Seller:**

**MONTANA STATE UNIVERSITY - BILLINGS**

By:   
Name: Ronald Sexton, Chancellor, Montana State University-  
Billings  
Its: \_\_\_\_\_

**Buyer:**

**EDUCATIONAL MEDIA FOUNDATION**

By: \_\_\_\_\_  
Richard Jenkins, President