

## **ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT (this “Agreement”) is made as of January 26, 2016, between **Community Media Assistance Project** (“Seller”), and **Round-Up Radio, Inc.**, (“Buyer”).

### **Recitals**

A. Seller holds the construction permit (the “Permit”) issued by the Federal Communications Commission (the “FCC”) under FCC File No. BNPFT-20130827AFG for FM translator K262CE, Facility ID No. 155769, Deer Park, Washington.

B. Subject to the terms and conditions set forth herein, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Permit.

### **Agreement**

NOW, THEREFORE, taking the foregoing into account, and in consideration of the mutual covenants and agreements set forth herein, the parties, intending to be legally bound, hereby agree as follows:

## **ARTICLE 1: PURCHASE OF PERMIT**

1.1. Sale and Purchase. On the terms and subject to the conditions hereof, at Closing (defined below), Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase and acquire from Seller, all rights, title and interest of Seller in and to the Permit. The Permit shall be transferred to Buyer free and clear of liens, claims and encumbrances (“Liens”).

1.2. Purchase Price. In consideration for the sale of the Permit to Buyer, Buyer shall pay Seller the total sum of Twenty Thousand Dollars (\$20,000.00) (the “Purchase Price”). Upon execution of this Agreement Buyer shall deliver to Seller the sum of Seven Thousand Five Hundred Dollars (\$7,500) to be held by Seller as an earnest money deposit (the “Deposit”). The Deposit will be credited against the Purchase Price at Closing. The remainder shall be paid in thirty six equal monthly installments \$380.27 (interest included), payable on the first day of each calendar month after the closing. The unpaid balance shall bear interest at the rate of six per cent per year. Until paid in full the payment of the balance shall be personally guaranteed by David N. Capps, a principal of Buyer.

If this Agreement is terminated by Seller pursuant to Section 9.1(c), then the Deposit shall be retained by Seller as liquidated damages. If this Agreement is terminated for any other reason, the Deposit shall be returned by Seller to Buyer.

Should the Translator be sold by Buyer prior to full payment of the Purchase Price, the then-remaining balance of the Purchase Price shall be paid to Seller at the closing of such sale.

1.3. Closing. The consummation of the sale and purchase of the Permit (the “Closing”) shall take place on the fifth (5<sup>th</sup>) business day after issuance of the FCC Consent (defined below), unless a petition to deny or other objection is filed against the Assignment Application (defined below), in which event at Buyer’s option the Closing shall take place on the fifth (5<sup>th</sup>) business day after the date the FCC Consent becomes Final (defined below), in any case subject to the satisfaction or waiver of the conditions required to be satisfied or waived pursuant to Articles 5 or 6 below (other than those requiring the taking of action at the Closing). The date on which the Closing is to occur is referred to herein as the “Closing Date.”

1.4. FCC Applications.

(a) As soon as practicable but in no event later than five (5) business days after the date of this Agreement, Buyer and Seller shall file an application with the FCC requesting FCC consent to the assignment of the Permit from Seller to Buyer (the “Assignment Application”). The FCC’s consent to the assignment of the Permit contemplated hereby without any material adverse conditions other than those of general applicability is referred to herein as the “FCC Consent.” Seller and Buyer shall make commercially reasonable efforts to obtain the FCC Consent. Each party shall promptly provide the other with a copy of any pleading, order or other document served on it relating to such application and shall furnish all information required by the FCC. If the Assignment Application proposes to convert the Permit to commercial status under the FCC’s rules, Buyer agrees to pay the FCC filing fee associated with the application.

(b) For purposes of this Agreement, the term “Final” means that action shall have been taken by the FCC (including action duly taken by the FCC’s staff, pursuant to delegated authority) which shall not have been reversed, stayed, enjoined, set aside, annulled or suspended; with respect to which no timely request for stay, petition for rehearing, appeal or certiorari or *sua sponte* action of the FCC with comparable effect shall be pending; and as to which the time for filing any such request, petition, appeal, certiorari or for the taking of any such *sua sponte* action by the FCC shall have expired or otherwise terminated.

## ARTICLE 2: SELLER REPRESENTATIONS AND WARRANTIES

Seller hereby represents and warrants to Buyer as follows:

2.1. Organization. Seller is duly organized, validly existing and in good standing under the laws of Oregon. Seller has the requisite power and authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby.

2.2. Authorization. The execution, delivery and performance of this Agreement and the Seller Ancillary Agreements have been duly authorized by Seller and approved by all necessary action of Seller and do not require any further authorization or consent of Seller. This Agreement is, and will be a legal, valid and binding agreement of Seller enforceable in accordance with its terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting

the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

2.3. No Conflicts. The execution and delivery by Seller of this Agreement and the consummation by Seller of the transactions contemplated hereby do not conflict with any organizational documents of Seller or any law, judgment, order, or decree to which Seller is subject or require the approval, consent, authorization or act of, or the making by Seller of any declaration, filing or registration with, any third party or any governmental authority, except the FCC Consent.

2.4. Permit. Seller is the holder of the Permit. The Permit is in full force and effect until October 30, 2018, and has not been revoked, suspended, canceled, rescinded or terminated and has not expired. There is not pending any action by or before the FCC to revoke, suspend, cancel, rescind or materially adversely modify the Permit other than proceedings to amend FCC rules of general applicability, and Seller has no knowledge of any such action at the FCC and no reason to believe that such an action may be sought from the FCC by any third party. There is no order to show cause, notice of violation, notice of apparent liability or notice of forfeiture or complaint pending or, to Seller's knowledge, threatened against Seller or the Permit by or before the FCC.

2.5. Ownership of Permit. Seller has good and marketable title to the Permit, free and clear of Liens.

2.6. Compliance with Law. Seller has materially complied with all laws, regulations, rules, writs, injunctions, ordinances, franchises, decrees or orders of any court or of any foreign, federal, state, municipal or other governmental authority which are applicable to the Permit. There is no action, suit or proceeding pending or, to Seller's knowledge, threatened against Seller in respect of the Permit.

2.7. No Finder. No broker, finder or other person is entitled to a commission, brokerage fee or other similar payment in connection with this Agreement or the transactions contemplated hereby as a result of any agreement or action of Seller or any party acting on Seller's behalf.

### ARTICLE 3: BUYER REPRESENTATIONS AND WARRANTIES

Buyer hereby represents and warrants to Seller as follows:

3.1. Organization. Buyer is duly organized, validly existing and in good standing under the laws of Oregon. Buyer has the requisite power and authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby.

3.2. Authorization. The execution, delivery and performance of this Agreement have been duly authorized and approved by all necessary action of Buyer and do not require any further authorization or consent of Buyer. This Agreement is a valid and binding agreement of

Buyer enforceable in accordance with its terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

3.3. No Conflicts. The execution and delivery by Buyer of this Agreement and the consummation by Buyer of the transactions contemplated hereby does not conflict with any law, judgment, order or decree to which Buyer is subject, or require the approval, consent, authorization or act of, or the making by Buyer of any declaration, filing or registration with, any third party or any governmental authority, except the FCC Consent.

3.4. Qualification. Buyer is legally, financially and otherwise qualified to acquire, own and operate the subject translator under the Communications Act and the rules, regulations and policies of the FCC.

3.5. Broker. No broker, finder or other person is entitled to a commission, brokerage fee or other similar payment in connection with this Agreement or the transactions contemplated hereby as a result of any agreement or action of Buyer or any party acting on Buyer's behalf.

#### ARTICLE 4: COVENANTS

Buyer and Seller hereby further covenant and agree as follows:

4.1. Confidentiality. Subject to the requirements of applicable law, all non-public information regarding the parties and their business and properties that is disclosed in connection with the negotiation, preparation or performance of this Agreement shall be confidential and shall not be disclosed to any other person or entity, except the parties' representatives and lenders for the purpose of consummating the transactions contemplated by this Agreement.

4.2. Control. Buyer shall not, directly or indirectly, control the Permit prior to Closing. Consistent with the Communications Act and the FCC rules and regulations, control, supervision and direction of the Permit prior to Closing shall remain the responsibility of Seller as the holder of the Permit.

4.3. Seller Covenants. Between the date hereof and the Closing Date, Seller shall: (i) maintain in effect the Permit, (ii) promptly deliver to Buyer copies of any material reports, applications or written responses to the FCC related to the Permit which are filed during such period, and (iii) not modify the Permit (except as may be requested by Buyer).

#### ARTICLE 5: SELLER CLOSING CONDITIONS

The obligation of Seller to consummate the Closing hereunder is subject to satisfaction, at or prior to Closing, of each of the following conditions (unless waived in writing by Seller):

5.1. Closing Deliveries. Buyer shall have made, or be ready, willing and able to concurrently make, the Closing deliveries described in Section 7.2.

5.2. FCC Consent. The FCC Consent shall have been obtained, and no court or governmental order prohibiting Closing shall be in effect.

#### ARTICLE 6: BUYER CLOSING CONDITIONS

The obligation of Buyer to consummate the Closing hereunder is subject to satisfaction, at or prior to Closing, of each of the following conditions (unless waived in writing by Buyer):

6.1. Closing Deliveries. Seller shall have made, or be ready, willing and able to concurrently make, the Closing deliveries described in Section 7.1.

6.2. FCC Consent. The FCC Consent shall have been obtained, but should a petition to deny or other objection be filed against the Assignment Application, at Buyer's option, the FCC Consent shall have become Final. Additionally, no court or governmental order prohibiting Closing shall be in effect.

#### ARTICLE 7: CLOSING DELIVERIES

7.1. Seller Documents. At Closing, Seller shall deliver to Buyer an Assignment of Construction Permit and other instruments of conveyance, assignment and transfer as may be necessary to convey, transfer and assign the Permit to Buyer, free and clear of Liens.

7.2. Buyer Documents. At Closing, Buyer shall pay the Purchase Price in accordance with Section 1.2 hereof.

#### ARTICLE 8: SURVIVAL

The representations and warranties in this Agreement shall survive Closing until the balance due is paid in full as per Section 1.2, whereupon they shall expire and be of no further force or effect.

#### ARTICLE 9: MISCELLANEOUS PROVISIONS

9.1. Termination. This Agreement may be terminated prior to Closing as follows, by the party named below, if that party is then not in material breach of any provision of this Agreement:

- (a) by mutual written consent of Buyer and Seller;

(b) by written notice of Buyer to Seller if Seller breaches in any material respect its representations or warranties or defaults in any material respect in the performance of its covenants or agreements herein contained and such breach or default is not cured within the Cure Period (defined below);

(c) by written notice of Seller to Buyer if Buyer breaches in any material respect its representations or warranties or defaults in any material respect in the performance of its covenants or agreements herein contained and such breach or default is not cured within the Cure Period; provided, however, that the Cure Period shall not apply to Buyer's obligation to pay the Purchase Price at Closing and timely to pay the installments. If the Buyer fails to remit any installment for more than 30 days, such failure shall constitute a default and the entire remaining balance shall become immediately due and payable; and

(d) by either Buyer or Seller, by written notice to the other, if the Closing has not been consummated on or before the date nine (9) months after the date of this Agreement.

The term "Cure Period" as used herein means a period commencing with the date that Buyer or Seller receives from the other party written notice of breach or default hereunder and continuing until thirty (30) days thereafter; provided, however, that if the breach or default cannot reasonably be cured within such period but can be cured before the Closing Date, and if diligent efforts to cure promptly commence, then the Cure Period shall continue as long as such diligent efforts to cure continue, but not beyond the Closing Date. Except as set forth herein, the termination of this Agreement shall not relieve any Party of any liability for breach or default under this Agreement prior to the date of termination.

9.2. Further Assurances. After Closing, each party shall from time to time, at the request of and without further cost or expense to the other, execute and deliver such other instruments of conveyance and assumption and take such other actions as may reasonably be requested in order to more effectively consummate the transactions contemplated hereby.

9.3. Remedies and Specific Performance. Seller agrees and acknowledges that the assets to be conveyed under this Agreement are unique, and monetary damages for its failure to consummate the transaction contemplated by this Agreement would cause Buyer injury for which compensation by monetary damages would be insufficient. Thus, in the event of Seller's failure to close as required by the terms of this Agreement, Seller acknowledges that specific performance is an appropriate remedy for its breach of its obligations hereunder. It waives any rights to object to the remedy of specific performance, including any claim that there are adequate remedies at law, and agrees to waive any obligation for Buyer to post any bond before the Court orders specific performance. In any legal action taken under this Agreement, including an action seeking specific performance, the party which substantially prevails in such action shall be entitled to receive, in addition to any other remedy to which it may be entitled, reimbursement of its reasonable attorney's fees and costs in bringing such action.

9.4. Assignment. Neither party may assign this Agreement without the prior written consent of the other party hereto. The terms of this Agreement shall bind and inure to the benefit of the parties' respective successors and assigns, and no assignment shall relieve any party of any obligation or liability under this Agreement.

9.5. Amendments. No amendment or waiver of compliance with any provision hereof or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in writing signed by the party against whom enforcement of such amendment, waiver, or consent is sought.

9.6. Governing Law. The construction and performance of this Agreement shall be governed by the laws of the State of Oregon without giving effect to the choice of law provisions thereof.

9.7. Notices. Any notice pursuant to this Agreement shall be in writing and shall be deemed delivered on the date of personal delivery or confirmed delivery by a nationally recognized overnight courier service, and shall be addressed as set forth in Schedule 9.7 (or to such other address as any party may request by written notice).

9.8. Entire Agreement. This Agreement, including the schedules hereto, constitutes the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and understandings with respect to the subject matter hereof. No party makes any representation or warranty with respect to the transactions contemplated by this Agreement except as expressly set forth in this Agreement.

9.9. Counterparts. This Agreement may be executed in separate counterparts, each of which will be deemed an original and all of which together will constitute one and the same agreement.

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**Signature page to Asset Purchase Agreement**

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

**SELLER:**

**Community Media Assistance Project**

By: (Michael D. Brown) 7-27-16

Name: Michael D. Brown

Title: President

**BUYER:**

**Round-Up Radio, Inc.**

By: David N. Capps

Name: DAVID N. CAPPS

Title: Pres.

**GUARANTOR:**

**David N. Capps**

By: David N. Capps  
David N. Capps

**SCHEDULE 9.7**

Notices to Seller:

Community Media Assistance Project  
3740 SW Comus St.  
Portland, Oregon 97219-7418  
Attention: Michael D. Brown, President

Notices to Buyer:

Round-Up Radio, Inc.  
2003 NW 56<sup>th</sup> Drive  
Pendleton, OR 97801  
Attn: David N. Capps, President