

## **ASSET PURCHASE AGREEMENT**

**THIS ASSET PURCHASE AGREEMENT** (the "Agreement") is made and entered into as of the 10th day of August 2016 and is by and between **COMMUNITY PUBLIC RADIO, INC.** (hereinafter referred to as "Assignor") and **DUHAMEL BROADCASTING ENTERPRISES** (hereinafter referred to as "Assignee"). Assignor and Assignee are collectively referred to herein as "the Parties".

### **RECITALS**

**WHEREAS**, the Federal Communications Commission (FCC) on or about November 27, 2013 granted to Assignor a new Construction Permit (File No. BNPFT-20130816ACX) for FM Translator Station K223CJ at Cheyenne, WY, (Facility ID No. 143016), (the "Translator"); and

**WHEREAS**, Assignor now desires to sell, assign and transfer the Construction Permit for the Translator on the terms and conditions specified herein; and

**WHEREAS**, Assignee desires to acquire the Construction Permit for the Translator on the terms and conditions specified herein; and

**WHEREAS**, consent of the Federal Communications Commission ("FCC") for the transaction contemplated hereunder is required prior to consummation thereof;

### **AGREEMENT**

**IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED HEREIN**, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. Assignment of Construction Permit and sale of other assets of the Translator. Subject to the terms and conditions herein set forth, Assignor agrees to assign and Assignee agrees to purchase and accept the assignment of the Construction Permit ("CP") for the Translator, together with all of Assignor's pre-construction research, books and records and goodwill relating exclusively to the Translator (collectively, with the CP, the "Assets"). The consummation of such assignment and purchase is referred to herein as the "Closing".
2. Consideration. The Purchase Price for the Assets shall be Thirty-Thousand Dollars (\$30,000) in cash, cashier's check or wire transfer at Closing. Of this amount, Six-Thousand Dollars (\$6,000) will be placed in Escrow by Assignee with Rockwell Media Services, LLC ("Rockwell") upon execution by both parties of this Agreement and the Escrow Agreement attached hereto as Exhibit A (the "Escrow Agreement"). This amount shall be considered an Earnest Money Deposit (the "Earnest Money Deposit"), which shall be released to Assignor by

Rockwell at Closing and be applied to the Purchase Price at Closing. Should the Closing not occur for any reason other than a material breach by Assignee of its obligations under this Agreement, the Earnest Money Deposit shall be returned to Assignee. Should the Closing not occur as a result of a termination of this Agreement due to Assignee's material breach, the Earnest Money Deposit shall be retained by Rockwell and given to Assignor less Rockwell's Fees and Costs (as defined in the Escrow Agreement). In any event all interest or other earnings on the Earnest Money Deposit shall be paid to Assignee upon release of the Earnest Money Deposit by the Escrow Agent.

3. Application. The parties shall cooperate in the electronic filing of an application (FCC Form 345) seeking FCC consent to the assignment (the "Assignment Application") and shall cause such filing to be made within three (3) business days following the date of execution of this Agreement. The parties shall each use best efforts to prosecute the Assignment Application diligently and in good faith so that it may be granted by the FCC as soon as practicable, provided, however, that in the event the Assignment Application has been designated for hearing by the FCC, either party may elect to terminate this Agreement upon written notice to the other party without limitation of either party's right to pursue any remedy available to it at law or in equity for breach of this Agreement.

4. Closing. On the date of Closing (the "Closing Date"), the Assignee agrees to pay the Purchase Price, and the Assignor shall deliver clear title to the Assets, free of any claims, liabilities, liens or other encumbrances of any nature. The Assets are to be conveyed by Assignor to Assignee through an assignment and any other document(s) of transfer (the "Closing Documents") customary for such purpose and reasonably satisfactory in form and substance to Assignor, Assignee, and their respective counsel. The Closing Date will occur within five (5) business days following the date on which the FCC approval of the assignment of the FCC Permit from the Assignor to the Assignee is granted and becomes a "Final Order". The parties shall not be obligated to proceed to Closing if (1) the Order includes conditions materially adverse to the Assignor or the Assignee; or (2) the conditions precedent to Closing have not been satisfied or waived. For purposes of this Agreement, the term "Final Order" shall mean an order of the FCC which is not reversed, stayed, enjoined or set aside; and as to which no timely request for stay, reconsideration, review, rehearing or notice of appeal or determination to reconsider or review is pending; and provided that the time for filing any such request, petition or notice of appeal or review by the FCC, and for any reconsideration, stay or setting aside by the FCC on its own motion or initiative, has expired. Notwithstanding the foregoing, Assignee may waive the requirement that the grant become a Final Order, in which case Closing shall occur following initial grant of the Application on a date within five (5) business days after Assignee gives notice to Assignor of such waiver.

5. Non-Closing. If the Closing has not occurred within twelve (12) months after the date of this Agreement, then either party may terminate this Agreement, provided, however, that the right to terminate this Agreement under this Section 5 shall not be available to any party whose failure to fulfill any obligation under this Agreement shall have been the principal cause of the failure to complete the Closing within such 12-month period. In the event of a material breach by either party of its representations, warranties, covenants or other obligations under this Agreement, which breach is not cured within thirty (30) days of notice of such breach given by the other party, such non-breaching party may terminate this Agreement upon written notice to the breaching party without limitation of the non-breaching party's right to pursue any remedy available to it at law or in equity for breach of this Agreement. In the event of a termination of this Agreement under this Section 5, the Deposit shall be refunded to Assignee, except in the event of a termination by Assignor due to a material breach and failure to cure on the part of Assignee, in which case the Earnest Money Deposit shall be delivered to Assignor pursuant to Section 2 hereof.

6. Representations, Warranties and Covenants.

(a) Each of Assignor and Assignee represents and warrants to the other that it has had the opportunity to have legal counsel review this Agreement and the action contemplated. The cost of legal representation shall be paid by the party which incurred the expense.

(b) Each of Assignor and Assignee represents and warrants to the other that it has full legal authority and power to enter into this Agreement and to timely perform all of its obligations set forth herein, and that this Agreement constitutes the legal, valid and binding obligation of that party, enforceable in accordance with its terms.

(c) Assignor covenants that, subject to Section 10 hereof, it will take no action to modify the CP and shall use all reasonable efforts to avoid any act that might have a material adverse effect upon the Assets, the CP, or the transaction contemplated hereby pending the Closing.

(d) Assignor represents and warrants that (i) it is the holder of the CP, (ii) the CP is valid and in full force and effect and constitutes all of the authorizations issued by the FCC in connection with the construction and/or operation of the new FM translator as provided in the CP, (iii) other than as set forth in the publicly available FCC records, the CP is not subject to any restriction or condition that would limit in any respect the construction and/or operation of the FM translator as set forth in the CP, (iv) (v) there is not pending or threatened any action by or before the FCC to revoke, suspend, cancel, rescind or modify the CP (other than proceedings relating to FCC rules of general applicability), and there is no order to show cause, notice of violation, notice of apparent liability, or notice of forfeiture or complaint by or before the FCC, pending or threatened, against Assignor regarding the CP.

(e) Assignor represents and warrants that it has complied in all material respects with all requirements to file reports, applications and other documents with the FCC with respect to the CP, and all such reports, applications and documents are complete and correct in all material respects.

(f) Assignor represents and warrants that it has, and on the Closing Date will have, good and marketable title to all of the Assets, free and clear of all claims and liens.

(g) Assignor represents and warrants that there are no leases or contracts pertaining to the Assets, and between now and the date of Closing, Assignor shall not, without the consent of Assignee, enter into any leases or contracts pertaining to the Assets or dispose of or agree to sell any of the Assets.

(h) Assignor represents and warrants that it has filed all federal, state and local tax returns which are required to be filed, and has paid all taxes and all assessments to the extent that such taxes and assessments have become due, other than such returns, taxes and assessments, the failure to file or pay would not, individually or in the aggregate, materially adversely affect the Assets.

(i) Each of Assignor and Assignee represents and warrants to the other that none of the representations or warranties made by it, nor any statement made in any document or certificate furnished by it pursuant to this Agreement contains or will contain at the Closing, any untrue statement of a material fact, or omits or will omit at the Closing, to state any material fact necessary in order to make the statements contained herein or therein, in the light of the circumstances under which they were made, not misleading.

7. Exclusivity and Confidentiality. The Assignor covenants that it will not seek to, and will not entertain any offers to, transfer, sell or assign, directly or indirectly, the CP or any interest therein to any third party. Further, the parties agree to keep confidential the terms of this Agreement, except with respect to any disclosure required by law or the FCC rules.

8. FCC and Financial Qualifications. Assignee represents and warrants that the Assignee is qualified to be an FCC licensee and to hold the CP, and that the Assignee is and will be financially qualified to perform all of its obligations under this Agreement at all relevant times.

9. Consents. Each of Assignor and Assignee represents and warrants to the other that, except for FCC consent, no consent, waiver, authorization or approval from, or filing of any notice or report with, any governmental authority or other person is necessary in connection with the execution, delivery or performance by such party of this Agreement or any of the documents or transactions contemplated hereby.

10. Applications. Assignor agrees to cooperate with Assignee in the filing a minor modification application (FCC Form 349) for the CP (the "Minor Modification Application") relocating and otherwise modifying the facilities proposed thereunder in a manner which will serve the Assignee's purposes. Assignor shall immediately establish a separate CDBS account associated with the Assignor's FRN with the Cheyenne, Wyoming (Facility No. 143016). All costs and expenses incurred by Assignee in conjunction with the preparation, review, filing and processing for the Minor Modification Application shall be paid by the Assignee. Assignor hereby consents to the filing by Assignee of the Minor Modification Application pursuant to section 73.3517(a) of the FCC Rules, and agrees to provide Assignee upon request with a statement to such effect to be filed with the Minor Modification Application.

11. Fees. The Parties agree that the legal fees shall be paid by the party which incurred the expense, and further that the FCC Assignment Application fee shall be paid one-half by the Assignee and one-half by the Assignor (i.e. 50/50).

12. Brokerage Fees. Assignor shall be solely responsible for its media broker's fees to Rockwell Media Services, LLC. Assignee has no media broker to which it owes media broker's fees for this transaction. Each party warrants that except for the persons named in the preceding sentence, no agent, broker, investment banker, or other person or firm acting on behalf of or under the authority of that party or any affiliate of that party is or will be entitled to any broker's or finder's fee or any other commission or similar fee, directly or indirectly, from the other party in connection with transactions contemplated by this Agreement.

13. Control of CP. Between the date of this Agreement and the Closing Date, Assignee shall not control the CP, which shall remain the sole responsibility and under the control of Assignor, subject to Assignor's compliance with this Agreement.

14. Public Notice. Upon filing the Assignment Application, the Assignor shall be responsible for, and shall take the necessary steps, to provide such legal public notice concerning the Assignment as is or may be required under the FCC Rules and provide Assignee with evidence of compliance with the local public notice requirement.

15. Assignor's Closing Conditions. All obligations of Assignor to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions which, except for the initial consent of the FCC to the assignment, may be waived in whole or in part by Assignor:

a. the FCC shall have consented to the assignment of the CP to Assignee without any condition materially adverse to Assignor; and

b. Assignee shall have delivered the balance of the Purchase Price in the manner specified in Section 4 hereof.

16. Assignee's Closing Conditions. All obligations of Assignee to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions which, except for the initial consent of the FCC to the assignment, may be waived in whole or in part by Assignee:

- a. the FCC shall have consented to the assignment of the CP to Assignee without any condition materially adverse to Assignee, and such consent shall have become a Final Order;
- b. Assignor shall have executed and delivered to Assignee the Closing Documents and conveyed the Assets to Assignee in accordance with this Agreement;
- c. all representations and warranties of Assignor made herein shall be true and correct in all material respects as of the Closing Date;
- d. the FCC shall have granted the Minor Modification Application; and
- e. as of the Closing Date, Assignor shall have complied in all material respects with all covenants and conditions of this Agreement.

17. Notices. All correspondence or notice required or desired to be given under this Agreement shall be deemed given when delivered to the US Postal Service, pre-paid First Class mail, or delivered to a nationally recognized overnight courier, addressed in either case to the address listed below:

To Assignor:

Community Public Radio, Inc.  
527 Woodfern Court  
Tallahassee, Florida 32312  
ATT: Lowell Jackson

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

Barlow Law, PLLC  
321 North Mall Drive R290  
St. George, UT 84790  
Attention: J. Christian Barlow  
Facsimile: (435) 215-2420  
Email: [jcb@JohnChristianBarlow.com](mailto:jcb@JohnChristianBarlow.com)



To Assignee:

Duhamel Broadcasting Enterprises  
518 Saint Joseph Street  
Rapid City, South Dakota 57701  
Attn: William F. Duhamel

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

Pillsbury Winthrop Shaw Pittman LLP  
1200 Seventeenth Street, NW  
Washington, DC 30026  
Attention: Lauren Lynch Flick  
Facsimile: (202) 663-8007  
Email: lauren.lynch.flick@pillsburylaw.com

16. Liquidated Damages. The parties agree that if this Agreement is terminated prior to Closing due to a breach thereof by Assignee, Assignor's actual damages would be difficult to ascertain and so the parties agree that the amount of the Earnest Money Deposit (\$6,000) is a reasonable amount to compensate the Assignee for such breach and that payment of such amount shall constitute liquidated damages and the sole remedy of Assignor for any such breach.

19. Specific Performance. In the event of a material breach of this Agreement by Assignor, instead of termination of this Agreement and seeking damages from Assignor, Assignee shall alternatively have the right to seek and obtain specific performance of the terms of this Agreement, it being agreed by Assignor that the Assets are unique assets. If any action is brought by Assignee pursuant to this subsection to enforce this Agreement, Assignor shall waive the defense that there is an adequate remedy at law. Notwithstanding the foregoing, Assignee shall be entitled to recover from Assignor its costs, expenses and losses (including reasonable legal fees) incurred in obtaining such specific performance.

20. Indemnification. Assignor indemnifies and holds Assignee harmless from any loss, liability, damage or expense (including legal and other expenses incident thereto) arising from or pertaining to (a) ownership of the Assets prior to the date of Closing or (b) breach of any covenants, representations or warranties of this Agreement, by Assignor. Assignee indemnifies and holds Assignor harmless from any loss, liability, damage or expense (including legal and other expenses incident thereto) arising from or pertaining to (a) ownership or operation of the

Assets subsequent to the date of Closing or (b) breach of any covenants, representations or warranties in this Agreement, by Assignee. No claims may be brought under this Agreement unless written notice describing in reasonable detail the nature and basis of such claim is given within a reasonable time after the party seeking indemnification becomes aware of the claim. The indemnifying party shall be entitled at its own expense to compromise or defend against the claim with counsel reasonably satisfactory to the indemnified party; provided, that once the defense thereof is assumed by the indemnifying party, the indemnifying party shall keep the indemnified party advised of all developments in the defense thereof and any related litigation, and the indemnified party shall be entitled at all times to participate in the defense thereof at its own expense.

21. No Liabilities Assumed. Assignee shall not assume or in any manner be liable for any debts, liens, obligations or liabilities of Assignor, whether express or implied, known or unknown, contingent or absolute.

22. Allocation of the Purchase Price. Assignor and Assignee shall agree to an allocation of the Purchase Price as reasonably established by Assignee. Assignor and Assignee shall use such allocation for all reporting purposes in connection with federal, state and local income and, to the extent permitted under applicable law, franchise taxes. Assignor and Assignee agree to report such allocation to the Internal Revenue Service in the form required by Treasury Regulation § 1.1060-1T.

23. Miscellaneous. This Agreement represents the entire agreement of the parties with respect to the subject matter herein and supersedes any prior agreement whether in writing or otherwise. This Agreement may be amended only in writing by an instrument duly executed by both parties and may be executed in counterparts. This Agreement may be executed in counterparts. The Agreement is to be construed and enforced under the laws of South Dakota with venue for any action brought to enforce this Agreement in the state or federal courts of competent jurisdiction of the State of South Dakota.

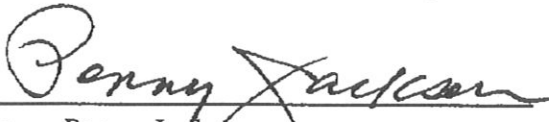
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The undersigned represent and warrant that, respectively, they have authority to sign this Agreement and to legally bind themselves to perform all of the terms hereof.

**WHEREFORE**, the parties whose names and addresses appear below have caused this Agreement to be executed by them as of the date first above written.

**COMMUNITY PUBLIC RADIO, INC. - "ASSIGNOR"**

  
By: Penny Jackson  
Its: President

**DUHAMEL BROADCASTING ENTEROPRISES - "ASSIGNEE"**

\_\_\_\_\_  
By: William F. Duhamel  
Its: President

The undersigned represent and warrant that, respectively, they have authority to sign this Agreement and to legally bind themselves to perform all of the terms hereof.


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By: Penny Jackson

Its: President

**DUHAMEL BROADCASTING ENTERPRISES - "ASSIGNEE"**

  
\_\_\_\_\_  
By: William F. Duhamel

Its: President

**Exhibit A**

Escrow Agreement