

TRANSLATOR ASSET PURCHASE AGREEMENT

This **TRANSLATOR ASSET PURCHASE AGREEMENT** (the "*Agreement*") is made as of this day of February, 2019, by and between **Peter Tran**, an individual resident of California (the "*Seller*"), and **San Juan College** doing business as KSJE (FM) (the "*Buyer*").

WITNESSETH:

WHEREAS, the Seller is the licensee of FM Radio Translator Station K277CR (FCC Facility ID No. 138467), Durango, CO (the "*Translator*"), and owner and holder of the Assets (as defined below); and

WHEREAS, the parties have agreed upon, and now wish to memorialize by execution of this Agreement, the terms and conditions under which Seller will assign and Buyer will acquire the License and Assets for the Translator.

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

1. **Purchase and Sale of Acquired Assets.** At the Closing (as defined below), upon the terms and subject to the conditions set forth in this Agreement, and in reliance on the representations, warranties, covenants and agreements made in this Agreement, Seller shall assign and transfer to Buyer and Buyer shall acquire and assume from Seller the following assets (the "*Assets*"), free and clear of debts, liens, claims, and other encumbrances except as specifically provided:

1.1 **License.** All licenses, permits and other authorizations issued by the Federal Communications Commission ("FCC") in connection with the conduct of the business and operation of the Translator, and any other licenses, permits and other authorizations issued by any governmental authority and used in the conduct of the business and operation of the Translator, and all pending applications therefore, together with all logs and records associated with Translator and its operation (the "*License*").

1.2 **Personal Property.** All the fixed and tangible personal property owned by Seller and used primarily in the operation of the Translator, and set forth on Schedule 1.2 hereof, less any such property consumed, depleted or otherwise disposed of in the ordinary course of business, plus all such property acquired by Seller in the ordinary course of business for the operation of the Translator, prior to the Closing Date (the "*Personal Property*").

1.3 **Transmitter/Antenna Site Lease.** The lease of the transmitter/antenna site used by Seller to operate the Translator, as particularly described and set forth in Schedule 1.3 hereof (the "*Lease*").

2. **Purchase Price.** Buyer will pay Seller the Purchase Price of THIRTY FIVE THOUSAND DOLLARS (\$35,000), as follows: (1) upon execution of this Agreement, Buyer

shall pay Seller the sum of FIVE THOUSAND DOLLARS (\$5,000) in the form of cash, wire transfer or other immediately available funds ("Down Payment"), to be held by Seller in escrow pending the Closing and (2) in addition to the Down Payment, at Closing, Buyer shall pay Seller the sum of THIRTY THOUSAND DOLLARS (\$30,000) in the form of cash, wire transfer or other immediately available funds. If the Closing does not occur because Buyer does not materially comply with the Terms of this Agreement, Seller may terminate this Agreement upon written Notice to Buyer and retain the Down Payment as liquidated damages and as Seller's sole and exclusive remedy with respect to Buyer. If Closing does not occur for any reason other than Buyer's material non-compliance with such Terms, then Seller shall return to Buyer, via cash, wire transfer, or other immediately available funds, the Down Payment, promptly upon demand.

3. **Closing.**

3.1 **Closing Date.** The closing of the transactions contemplated by this Agreement (the "*Closing*") shall occur at a time and place mutually agreed upon by the parties on a date that is no later than ten (10) days following the date that the FCC's grant of the application to assign the License (the "Assignment Application") has become a Final Order (as defined below). The term "*Closing Date*" shall mean the date of the Closing.

3.2 **Final Order.** For purposes of this Agreement, a "*Final Order*" shall mean an action by the FCC: (i) which has not been vacated, reversed, stayed, set aside, annulled or suspended, (ii) with respect to which no timely appeal, request for stay or petition for rehearing, reconsideration or review by any party or by the FCC on its own motion, is pending, and (iii) as to which the time for filing any such appeal, request, petition, or similar document, or for the reconsideration or review by the FCC on its own motion under the Communications Act of 1934 and the rules and regulations of the Commission, has expired. The Closing contemplated by this Agreement is expressly conditioned upon the FCC grant of the Assignment Application.

4. **Assumption of Obligations.** Buyer does not, and shall not be deemed to, assume any liabilities, obligations, claims, duties, liens, encumbrances or commitments of Seller arising or accruing prior to Closing. Buyer will assume the Seller's obligations under the Lease from and after the Closing, provided that lessor executes the Lease to Buyer.

5. **FCC Consent.** The assignment of the License contemplated by this Agreement is subject to the FCC's having granted the Assignment Application (the "*FCC Consent*") by Final Order (unless "finality" is waived by mutual consent of the Parties) as described below.

No later than fifteen (15) days after the execution of this Agreement, Seller shall file an application with the FCC for assignment of the License for the Translator. Seller and Buyer shall prosecute the Assignment Application with all reasonable diligence and otherwise use their reasonable best efforts to obtain the grant by Final Order of the Assignment Application as expeditiously as practicable. If the FCC Consent imposes any condition on any party hereto, such party shall use reasonable efforts to comply with such condition; *provided, however*, that no party shall be required hereunder to comply with any condition that would have a

material adverse effect as determined by the party affected in the exercise of its reasonable judgment. If reconsideration or judicial review is sought with respect to the FCC Consent, the party affected shall oppose such efforts for reconsideration or judicial review vigorously; *provided, however*, that nothing herein shall be construed to limit either party's right to terminate this Agreement pursuant to the terms of this Agreement.

6. **Representations, Warranties, and Covenants of the Seller.** The Seller hereby represents, warrants, and covenants to Buyer that the following are true and correct in all material respects as of the date of this Agreement and shall be true and correct on the Closing Date:

6.1 **Licenses; Compliance with Laws.** License is in full force and effect and has not been revoked, suspended, canceled, rescinded or terminated and has not expired. Seller has complied, and is complying, with all laws and regulations applicable to the operation of the Translator, and the provisions of the License. Seller has not received notice of, nor is Seller in default under or in breach or violation of, any statute, law, ordinance, decree, order, rule or regulation, or the provisions of any franchise, license or permit, including the License, and FCC regulations. The execution, delivery and performance of this Agreement by the Seller, and the consummation of the transactions contemplated hereby, will not result in any such default or violation or in the creation of any lien, charge or encumbrance upon the Translator or the Assets.

6.2 **No Conflict.** The execution, delivery and performance of this Agreement do not violate: (a) any provision of, or result in any default under, any mortgage, lien, lease, contract, instrument, order or other judgment, or decision to which Seller is a party or to which the Translator, License or Assets is subject or (b) any law or regulation applicable to Seller.

6.3 **Binding Agreement.** This Agreement constitutes, and all other agreements and instruments entered into or delivered in connection with the transactions contemplated hereby will constitute, the valid and binding obligations of Seller and are enforceable against Seller (or upon execution and delivery will be enforceable against Seller), in accordance with their respective terms.

6.4 **Governmental Authorizations.** Seller is the authorized holder of the License, which is not subject to any restrictions or conditions which would limit in any respect the full operation of the Translator. Seller has delivered to Buyer a true and complete copy of the License, including any and all amendments and other modifications thereto. The License is a validly existing authorization for the operation of the facilities described therein. The Translator has been silent since November 12, 2018, Seller applied to the Commission on December 5, 2018, for Special Temporary Authority to remain silent ("STA") which request the Commission accepted for filing on December 7, 2018. Seller is and will diligently prosecute the STA request, and timely request extensions thereof if, as and when necessary. There are no applications or proceedings pending (including, without limitation, any action, proceeding, investigation or order to show cause, notice of violation, notice of apparent liability or complaint involving Seller or the Translator by or before the FCC) nor, to the knowledge of Seller are there any such applications, proceedings or complaints threatened which individually or in the aggregate may have an adverse effect on the business or operation of the Translator

(other than rulemaking proceedings that apply to the radio broadcasting industry generally). All material reports, forms and statements required to be filed by Seller with the FCC with respect to the License have been filed and are substantially complete and accurate. To the best knowledge of Seller, there are no facts which would disqualify Seller as assignor of the License under the Communications Act of 1934, as amended, or the rules and regulations of the FCC.

6.5 **Brokers; No Undisclosed Liabilities.** Other than Griffin Media Brokers, Beth Griffin, whose fee will be paid by Seller at Closing, 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. All Translator operating expenses, including utility bills and transmitter and antenna site rents and fees are current and not in arrears, and any payments due on the Assets are current, and will be paid in full as of the Closing Date. There are and will be no liens, encumbrances, charges or security interests encumbering any of the Assets. There are and will be no liabilities with respect to the Translator or Assets.

6.6 **Legal Proceedings.** There are no suits, actions, condemnation actions, claims, arbitration, or other proceedings or governmental investigations (collectively, “*Litigation*”) pending or threatened against or affecting the Translator or the Assets, nor is Seller subject to any writ, judgment, award, decree or order of any court or governmental authority that would adversely affect Buyer’s ability to acquire the Translator and Assets. There is no Litigation pending or, to Seller’s knowledge, threatened against or affecting the Seller that could adversely affect or prevent the consummation of the transactions contemplated hereby, nor is Seller subject to any order of any court or governmental entity that could adversely affect or prevent consummation of the transactions contemplated hereby.

6.7 **Payment of Taxes.** Seller has duly and timely filed all Federal, state, local or foreign income, franchise, sales, use, property, excise, payroll, FICA, withholding and other tax returns and forms required to be filed, and has timely paid in full or discharged or will pay in full or discharge as of the Closing all taxes, assessments, excises, interest, penalties, deficiencies and levies required to be paid and pertaining to the Assets to be transferred hereunder.

7. **Representations, Warranties and Covenants of the Buyer.** The Buyer hereby represents, warrants and covenants to Seller that the following are true and correct in all material respects as of the date of this Agreement and shall be true and correct on the Closing Date:

7.1 **Status.** Buyer is a not-for-profit educational entity duly organized, validly existing and in good standing under the laws of the State of New Mexico. Buyer has all requisite power and authority to own the Translator and to carry on its business and the operation of the Translator as they may be conducted. Buyer is duly qualified to do business and is in good standing in such other jurisdictions, if any, where the nature of the business and operation of the Translator would require such qualification.

7.2 **Binding Agreement.** This Agreement constitutes, and all other agreements and instruments entered into or delivered in connection with the transactions contemplated hereby will constitute, the valid and binding obligations of the Buyer and are

enforceable against the Buyer (or upon execution and delivery will be enforceable against the Buyer) in accordance with their respective terms.

7.3 **Consents.** No consent or approval of any third party or governmental body (other than the FCC) is required for the consummation by the Buyer of the transactions contemplated by this Agreement.

7.4 **Qualification.** There are no facts which, under the Communications Act of 1934 as amended, or the existing rules and regulations of the FCC, would disqualify Buyer as an assignee of the License.

8. **No Control of Translator.** Prior to the Closing Date, Buyer shall not, directly or indirectly, control, supervise or direct the operations of the Translator; such control, supervision and direction shall remain and shall be the sole responsibility of Seller.

9. **Conditions of Closing.**

9.1 **Buyer's Obligations.** The obligations of the Buyer under this Agreement are subject to the fulfillment, at the Closing on the Closing Date, of all of the conditions precedent set forth in this Section 9.1:

9.1.1 **FCC Consent.** The FCC shall have granted the Assignment Application in the FCC Consent, which at Buyer's option shall have become a Final Order. Buyer may waive the FCC Consent becoming a Final Order, with the consent of Seller.

9.1.2 **Lessor Consent.** The lessor under the Lease shall have executed the Lease to Buyer.

9.1.3 **Instruments of Conveyance.** Seller shall have delivered to Buyer the following instruments, all of which shall be in a form customary in the State of New Mexico and reasonably satisfactory to Buyer:

- (i) Bill of sale and other instruments of assignment and transfer, covering all the Personal Property and the Lease;
- (ii) Assignments and other appropriate instruments assigning the License;
- (iii) Such other documents as Buyer shall reasonably request and which are necessary to place Buyer in ownership and actual possession and operating control of the Translator and the Assets being transferred hereunder.

9.1.4 **Accuracy of Representations – Compliance with Covenants.** The representations, warranties and covenants of Seller contained in this Agreement shall be true and correct in all material respects as of the Closing Date with the same force and effect as if

made on that date, except to the extent otherwise contemplated herein, and Seller shall have complied in all material respects with all its covenants herein.

9.1.5 **Other Acts.** Seller shall, within reason, have done any other acts which are necessary to effectuate the transactions contemplated herein.

9.2 **Seller's Obligations.** The obligations of the Seller under this Agreement are subject to the fulfillment, at the Closing on the Closing Date, of all of the conditions precedent set forth in this Section 9.2:

9.2.1 **FCC Consent.** The FCC shall have granted the Assignment Application in the FCC Consent. At Buyer's option and request, Seller agrees to waive the FCC Consent becoming a Final Order.

9.2.2 **Purchase Price.** Buyer shall have delivered to Seller the Purchase Price.

9.2.3 **Accuracy of Representations – Compliance with Covenants.** The representations, warranties and covenants of Buyer contained in this Agreement shall be true and correct in all material respects as of the Closing Date with the same force and effect as if made on that date, except to the extent otherwise contemplated herein, and Buyer shall have complied in all material respects with all its covenants herein.

9.2.4 **Other Acts.** Buyer shall, within reason, have done any other acts which are necessary to effectuate the transactions contemplated herein.

10. **Termination.**

10.1 **Termination for FCC Inaction.** If the FCC Consent shall not have become a Final Order within six (6) months of the date hereof, either Buyer or Seller may terminate this Agreement upon written notice to the other, provided that the party seeking to terminate is not in default hereunder, and Seller shall return the Down Payment to Buyer.

10.2 **Termination for Default:** Either party may terminate this Agreement if the other shall be in material breach hereof and if the said breach (other than a payment default under Section 2 of the Agreement) shall not have been cured within ten (10) days of receipt of written notice thereof by the party seeking to terminate, provided, however, that if any such breach is not reasonably susceptible of being cured within ten days, then the party in breach shall have undertaken to cure the breach with all reasonable diligence and shall have cured the breach as promptly as is reasonably practicable. In the event of Seller's uncured breach, the Down Payment shall be returned by Seller to Buyer.

11. **Indemnification.**

11.1 **Indemnification of Buyer.** Seller shall indemnify, defend and hold Buyer, its members, officers, affiliates, successors and assigns, harmless from and against any

claim, liability, loss, damage, judgment or expense (including reasonable attorney's fees) of any kind or nature arising out of or attributable to: (i) any material inaccuracy in any representation or breach or failure of any warranty, covenant or agreement of Seller contained herein, (ii) any failure by Seller to perform or observe, or to have performed or observed, in any material respect any agreement or condition to be performed or observed by Seller hereunder, or (iii) any event, condition or occurrence which occurs prior to the Closing Date or related to the operation of the Translator prior to Closing.

11.2 **No Indemnification of Seller.** The Parties acknowledge that Buyer is a state educational institution. As such it is prohibited from contractually creating any liability that might exceed authorized expenditures. Indemnification and save harmless clauses create potentially unlimited contractual liability and are prohibited. Additionally, the New Mexico Constitution prohibits the state from pledging or lending its credit, directly or indirectly. In New Mexico, an indemnification clause is considered an improper pledge of the buyer's credit. The Parties further acknowledge that the State of New Mexico Risk Management Division and Buyer are prohibited from providing free public liability fund coverage to private third party contractors/entities/agencies because of the "Anti-Donation Clause" contained in the New Mexico Constitution (Article IX, Section 14). Therefore, buyer cannot additionally insure or indemnify a third party.

12. **Miscellaneous Provisions.**

12.1 **Survival of Representations, Warranties, and Covenants.** The representations, warranties, and covenants of the Buyer and the Seller contained in this Agreement shall survive and be enforceable for one (1) year after the Closing Date.

12.2 **Fees and Expenses.** Except as expressly set forth in this Agreement, each of the parties will bear its own expenses in connection with the negotiation and the consummation of the transactions contemplated by this Agreement. Buyer will pay any required FCC filing fee in connection with the Assignment Application.

12.3 **Entire Agreement.** This Agreement and the Exhibits hereto embody the entire agreement and understanding of the parties hereto and supersedes any and all prior agreements, arrangements and understandings relating to the matters provided for herein. No amendment, waiver of compliance with any provision or condition 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 any waiver, amendment, change, extension or discharge is sought.

12.4 **Headings.** The headings set forth in this Agreement are for convenience only and will not control or affect the meaning or construction of the provisions of this Agreement.

12.5 **Notices.** Any notice, demand or request required or permitted to be given under the provisions of this Agreement shall be in writing, addressed to the following addresses, or to such other address as any party may request.

If to Seller:

Peter Tran
3715 Brems Street
San Diego, CA 92115
(619) 717-9291
e-mail: ptran711@yahoo.com

If to Buyer:

Scott Michlin
KSJE
4601 College Boulevard
Farmington, NM 87402
(505) 566-3517
e-mail: michlins@sanjuancollege.edu

Any such notice, demand or request shall be deemed to have been duly delivered and received (a) on the date of personal delivery, or (b) on the date of transmission, if sent by email (but only if a hard copy is also sent by overnight courier or United States Express Mail), or (c) on the date of receipt, if mailed by certified mail, postage prepaid and return receipt requested, or (d) on the date of a signed receipt, if sent by an overnight delivery service, but only if sent in the same manner to all persons entitled to receive notice or a copy.

12.6 **Benefit and Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Neither party may assign its rights, interest or obligations under this Agreement without the prior written consent of the other party.

12.7 **Governing Law.** The construction and performance of this Agreement shall be governed by the laws of the State of New Mexico applicable to agreements made and to be performed in the State of New Mexico without regard to its principles of conflicts of law.

12.8 **Severability.** In the event that any of the provisions of this Agreement shall be held unenforceable, the remaining provisions shall be construed as if such unenforceable provisions were not contained herein. Any provision of this Agreement which is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof, and any such unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction. To the extent permitted by applicable law, the parties hereto hereby waive any provision of law now or hereafter in effect which renders any provision hereof unenforceable in any respect.

12.9 **Limitation of Liability.** To the maximum extent permitted by law, in no event will either Seller or Buyer be responsible for any incidental damages, consequential damages, exemplary damages of any kind, lost goodwill, lost profits, lost business and/or any indirect economic damages whatsoever regardless of whether such damages arise from claims based upon contract, negligence, tort (including strict liability or other legal theory), a breach of any warranty or term of this agreement, and regardless of whether Seller or Buyer was advised or had reason to know of the possibility of incurring such damages in advance.

12.9 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument. This Agreement may be executed and exchanged by electronic transmission, with the same legal effect as if the signatures had appeared in original handwriting on the same physical document. No party to this Agreement shall raise the use of a electronic transmission to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated electronically as a defense to the formation of a contract and each such party forever waives any such defense

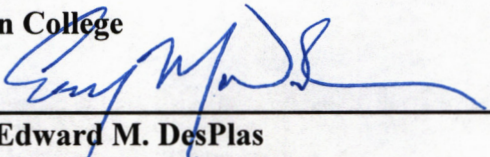
[Signatures on Next Page]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date herein first above-written.

SELLER: **Peter Tran**

Peter Tran

BUYER: **San Juan College**


By 

Name: Edward M. DesPlas
Title: Executive Vice President

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date herein first above-written.

SELLER:

Peter Tran

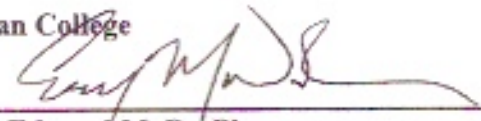

03-08-19

Peter Tran

BUYER:

San Juan College

By



Name: Edward M. DesPlas
Title: Executive Vice President

Schedule 1.2

K277CR DURANGO EQUIPMENT LIST

2/11/2019

1 Bext XT 50 FM transmitter
1 Inovonics 631 FM receiver
1 Bext TFC1K FM Circularly polarized antenna
1 LOG R FM Receive antenna

1- 80 Ft RG 213 Coaxial Cable
1-80 FT RG-6 Coaxial Cable

And (Buyer may exchange some/all of the foregoing components for the following; at Buyer's option at Closing, without additional consideration)

1 Warner RF 80 Watt FM transmitter
1 Inovonics Arron 650 FM receiver
1 Bext MDR FM Vertically polarized antenna

1- 100 Ft RG 213 Coaxial Cable
1-100 FT RG-6 Coaxial Cable

Schedule 1.3

Smelter Site Lease, between Mountain High Electronics and Communications, and KSJE, dated January 1, 2019.

GSB:9992034.2