

## **DONATION AGREEMENT**

**THIS DONATION AGREEMENT** (this "Agreement") is made on this 27th day of October, 2009, by and between PMCM TV, LLC, a New Hampshire limited liability company ("PMCM") whose address is 69 West Parish Road, Concord, New Hampshire 03301, and White Pine Television The District #1, a taxpayer supported local government entity in the State of Nevada (the "District"), whose address is P.O. Box 151704, Ely, Nevada 89315. PMCM and the District are sometimes individually referred to in this Agreement as a "Party" and collectively as the "Parties."

### **WITNESSETH**

**WHEREAS**, PMCM has entered into an Asset Purchase Agreement with Valley Broadcasting Company ("Valley") to acquire substantially all of the assets of television translator Station K58BC, Ely, etc., Nevada (FCC Facility ID No. 69684) (the "Station"), and PMCM and Valley have applied for approval of the Federal Communications Commission (the "FCC") of this transaction;

**WHEREAS**, following approval by the FCC of the purchase by PMCM of the Station's assets from Valley and consummation of that transaction, PMCM desires to donate and convey substantially all of the Station's assets to the District;

**WHEREAS**, the District desires to receive and own the Station and its assets under the terms and conditions stated herein; and

**WHEREAS**, the consummation of the donation transaction contemplated by this Agreement is subject to the prior approval of the FCC.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions herein contained, it is hereby agreed as follows:

1. **ASSETS**. Subject to the prior approval of the FCC, PMCM agrees to transfer, assign, convey, and deliver to the District, and the District agrees to receive and accept, free and clear of all liabilities, debts, liens, charges, assessments and encumbrances of any kind, the following:

- (a) all licenses, construction permits, authorizations or other rights of any kind issued or granted by the FCC for operation of the Station (collectively the "FCC Licenses") listed in Schedule 1(a);
- (b) certain equipment used in the operation of the Station (the "Equipment") listed in Schedule 1(b);
- (c) certain intangible property used in the operation of the Station ("Intangible Property") listed in Schedule 1(c).

The schedules identified above are attached hereto and made a part hereof for all purposes. The FCC Licenses, Equipment, and Intangible Property are sometimes collectively referred to in this Agreement as the "Donated Assets." PMCM will retain any asset not specifically identified on Schedules 1(a) through 1(c) hereto. The District assumes no liabilities, debts, or obligations of PMCM. The District assumes no liability for periods on or before the Closing Date (as defined below) under any contract or for any other liability, debt or obligation of PMCM, including without limitation, any which may have accumulated or accrued on any contracts or other agreements on or before the Closing Date.

2. **GIFT.** Subject to the prior approval and consent of the FCC, PMCM agrees to convey the Donated Assets to the District as a gift and, as such, will not require any form of payment from the District in exchange for said gift, provided, that the District shall perform the covenants and obligations contained herein. PMCM may, in its discretion, engage one or more qualified appraisers to appraise the value of the Donated Assets (the "Appraisal Value") and may seek a charitable donation deduction to the extent allowable under the Internal Revenue Code of 1986, as amended (the "Code"), based upon such Appraisal Value. The District shall render reasonable cooperation to PMCM with respect to PMCM's claim of a charitable donation deduction by provision of any required documentation in connection therewith to confirm the delivery of the Donated Assets to the District.

3. **PMCM'S COVENANTS AND WARRANTIES.** PMCM hereby covenants and warrants as follows:

- (a) the FCC Licenses are in full force and effect, and the Station operates in material compliance with the FCC Licenses, the rules and regulations of the FCC, and applicable laws of the State of Nevada and federal laws.
- (b) PMCM is aware of no litigation, proceeding, or investigation whatsoever pending or threatened against or relating to PMCM, its business, or the Donated Assets to be transferred hereunder, and knows of no reason why the FCC Licenses would not be renewed in the ordinary course;
- (c) As of the Closing Date, PMCM will have good marketable title to all of the Donated Assets;
- (d) PMCM will convey said Donated Assets to the District in "as-is" condition on the Closing Date, and, except as expressly set forth in this Agreement, makes no warranty whatsoever with regard to the operating condition of the Donated Assets;
- (e) PMCM will deliver the Donated Assets at Closing free and clear of all liabilities, debts, liens, claims, charges, assessments or other encumbrances of any kind;
- (f) PMCM has full power and authority to enter into and perform this Agreement and that this Agreement will constitute a valid and binding Agreement of PMCM enforceable in accordance with its terms;

(g) PMCM will pay for the cost of converting the Station's transmitter to digital operation consistent with FCC grant of an application in connection with such conversion as described in Section 5 below, *provided, however*, that the cost of shipping the transmitter to and from the conversion service provider shall be the responsibility of the District;

(h) from and after Closing, PMCM will grant permission to the District to rebroadcast, at the District's election, the over-the-air signal of PMCM's Station KVVN, Ely, Nevada, operating on Channel 3, for so long as PMCM continues the broadcast operations of Station KVVN in Ely, Nevada; and

(i) the warranties, representations, and covenants contained in this Section 3 shall survive Closing for a period of two (2) years.

4. **THE DISTRICT'S COVENANTS AND WARRANTIES.** The District hereby covenants and warrants as follows:

(a) at present and on the Closing Date, the District has full power and authority to enter into and perform this Agreement, and this Agreement will constitute a valid and binding Agreement of the District enforceable in accordance with its terms;

(b) the District knows of no reason why it should not be approved to become a holder of the FCC Licenses; and

(c) the warranties, covenants, and representations contained in this Section 4 shall survive the Closing Date for a period of two (2) years.

5. **FCC APPLICATIONS.** Within five (5) business days after consummation of PMCM's acquisition of the Station assets from Valley, both Parties hereto agree to file a joint application with the FCC seeking consent to assignment of the FCC Licenses to the District and to cooperate fully and diligently in seeking FCC's consent to such assignment application. PMCM shall pay any FCC fee required for filing said application. After consummation of PMCM's acquisition of the Station assets from Valley, PMCM also agrees to prepare, submit to the FCC (and pay any applicable filing fees, engineering and legal costs), and diligently prosecute at PMCM's expense an application to convert the Station to digital broadcast operations on channel 22, to serve the community of Ely, Nevada.

6. **CLOSING.** Closing (the "Closing" or "Closing Date") shall take place at a place and time designated by PMCM, but in no event earlier than ten (10) days after the date of the grant of FCC consent to the assignment of the FCC Licenses to the District. PMCM will provide advance notice to the District and coordinate the choice of a Closing Date with the District in order to permit the District to perform its duties prior to and at the Closing.

7. **TERMINATION.** In the event that prior to Closing, the Donated Assets are damaged or destroyed such that the Station is rendered inoperable for a period of thirty (30) days or more, either Party shall have the right to terminate this Agreement, exercisable by giving

written notice of such decision to the other Party within ten (10) days after receiving written notice of such damage, destruction, or condemnation proceedings. Upon a Party's exercise of its right to terminate this Agreement in accordance with the provisions of Section this Section 7, neither Party shall have any further rights, duties, obligations, or liabilities under this Agreement to the other Party.

8. **STATION CONTROL.** After PMCM acquires the Station's assets from Valley, but prior to Closing, PMCM shall have complete control over the Donated Assets and operation of the Station. Between the consummation of the PMCM/Valley transaction and prior to Closing the District shall have the right to reasonable access to Station's logs and other records as to the operation of the Station and to inspect the Donated Assets. Upon Closing and the transfer and assignment of the Donated Assets, as contemplated herein, the District shall have complete control over the Donated Assets and operation of Station.

9. **CLOSING DOCUMENTS.** At the Closing, PMCM will execute and deliver to the District customary assignments, instruments, and other documents sufficient to grant to the District title to the Donated Assets, free and clear of liabilities, debts, claims, assessments, liens and other encumbrances of any kind.

10. **NOTICES.** All notices required or permitted to be given under the provisions of this Agreement shall be in writing, delivered by personal delivery, or sent by commercial delivery service or certified mail, return-receipt requested. Property made notices shall be 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. Notices shall be addressed as follows:

If to The District:

White Pine Television District #1  
P.O. Box 151704  
Ely, Nevada 89315  
Attention: Robert Swain, Chairman

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

**Kirsty E. Pickering, Esq.**  
\_\_\_\_\_  
**333 Murry Street**  
\_\_\_\_\_  
**Ely, NV 89301**  
\_\_\_\_\_

Attention: \_\_\_\_\_

If to PMCM:

PMCM TV, LLC  
69 West Parish Road  
Concord, NH 03301  
Attention: Richard Morena

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

Fletcher, Heald & Hildreth, P.L.C.  
1300 North 17<sup>th</sup> Street, 11<sup>th</sup> Floor  
Arlington, VA 22209  
Attention: Harry F. Cole, Esq.

11. **STRICT COMPLIANCE.** No failure of a Party to exercise any right or to insist upon strict compliance by the other Party with any obligations and no custom or practice of the Parties at variance with this Agreement shall constitute a waiver of the right of a Party to demand strict and exact compliance. Waiver by one Party of any particular default by the other Party shall not affect or impair a Party's rights in respect to a subsequent default of the same or of a different nature, nor shall any delay or omission of a Party to exercise any rights arising from such default affect or impair the rights of that Party as to such default or any subsequent default.

12. **SEVERABILITY AND INDEPENDENT COVENANTS.** If any covenant or other provision of this Agreement is invalid, illegal, or incapable of being enforced by reason of any law, administrative order, judicial decision, or public policy, all other conditions and provisions shall remain in full force and effect. No covenant shall be deemed dependent upon any other covenant or provision unless so expressed in this Agreement.

13. **FURTHER ASSURANCES.** The Parties shall take any actions and execute any other documents that may be necessary or desirable to the implementation and consummation of this Agreement.

14. **GOVERNING LAW.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Nevada, without regards, however, to the choice of law provisions thereof which may direct the application of the laws of another jurisdiction.

15. **ENTIRE AGREEMENT.** This Agreement, the Schedules hereto, and all documents, certificates, and other documents to be delivered by the Parties pursuant hereto collectively represent the entire understanding and agreement between PMCM and the District with respect to the subject matter of this Agreement. This Agreement supersedes all prior negotiations among the Parties and cannot be amended, supplemented, or changed except by an agreement in writing that makes specific reference to this Agreement and that is signed by the Party against which enforcement of any such amendment, supplement, or modification is sought.

16. **WAIVER OF COMPLIANCE; CONSENTS.** Except as otherwise provided in this Agreement, any failure of any of the Parties to comply with any obligation, representation, warranty, covenant, agreement, or condition herein may be waived by the Party entitled to the benefits thereof only by a written instrument signed by the Party granting such waiver, but such waiver of failure to insist upon strict compliance with such obligation, representation, warranty, covenant, agreement, or condition shall not operate as a waiver of or estoppel with respect to any subsequent or other failure. Whenever this Agreement requires or permits consent by or on behalf of any Party hereto, such consent shall be given in writing in a manner consistent with the

requirements for a waiver of compliance set forth in this Section 16.

17. **COUNTERPARTS**. This Agreement may be signed in counterparts with the same effect as if the signature on each counterpart were upon the same instrument.

**[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK--  
SIGNATURES APPEAR ON FOLLOWING PAGE]**

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

**WHITE PINE TELEVISION DISTRICT #1**

By: Robert Swain

Name: Robert Swain

Title: Chairman of the Board

**PMCM TV, LLC**

By: Robert E McAllan

Name: Robert E. McALLAN

Title: managing member

**Table of Schedules**

- 1.1(a)      FCC Licenses
- 1.1(b)      Equipment
- 1.1(c)      Intangible Property

**Schedule 1.1(a)**

**List of Licenses, Permits and Authorizations**

Station Call Sign:	K58BC
Facility ID No.:	69684
Community of License:	Ely, etc., Nevada
Channel:	58
Most Recent Renewal File No.:	BRCT-20060525AJJ

**Schedule 1.1(b)**

**Equipment**

Transmitter (presently analog Ch. 58, convertible to digital Ch. 22)

Digital Modulator

Microwave System (unlicensed)

Cables and Misc. Equipment

Note: The Station's current antenna is specifically excluded from this Donation transaction.

**Schedule 1.1(c)**

**Intangible Property**

Engineering reports, studies and technical exhibits for conversion of the Station to digital operation.