

DONATION AGREEMENT

THIS DONATION AGREEMENT ("Agreement") is made and entered into as of the 30th day of April, 2019, by and between 4-K's LLLP, a Colorado Limited Partnership ("Donor"), and Open Media Foundation, a _____ non-stock, non-profit corporation ("Donee").

WITNESSETH

WHEREAS, Donor is the Federal Communications Commission (the "FCC") licensee of FM translator station, K225BS, Denver, CO (Facility ID No. 140244) (the "Station");

WHEREAS, Donor is also the licensee FM Translator K284CI, Denver, CO (Facility ID No. 33475) and thus no longer needs Station K225BS for use in its operation of KDCO(AM) (Facility ID No. 34585), Denver, CO;

WHEREAS, Donor desires to convey all rights, title, and interest in and to the FCC license and certain assets of Station K225BS to Donee; and

WHEREAS, Donee desires to receive and own the Station and certain assets of the Station under the terms and conditions stated herein.

AGREEMENT

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

1. **Assets**. Donor agrees to transfer, assign, convey, and deliver to Donee, and Donee agrees to receive and accept, free and clear of all liabilities, debts, liens, charges, assessments, and encumbrances of any kind, the following (collectively, the "Donated Assets"):

(a) all licenses, construction permits, authorizations, or other rights of any kind issued or granted by the FCC to Donor with respect to the Station (collectively, the "FCC Licenses") listed in Schedule 1(a) of this Agreement;

(b) the equipment specified in Schedule 1(b) of this Agreement. (collectively, the "Tangible Personal Property");

(c) all FCC files and records pertaining to the Station (the "FCC Records").

This donation specifically excludes from the Donated Assets any assets not expressly included by this Agreement, including the Donor's accounts receivable, or any cash on hand.

2. **Gift**. Subject to the prior approval and consent of the FCC, Donor agrees to convey the Donated Assets to Donee as a gift, and as such, will not require any form of payment from Donee in exchange for said gift – provided that Donee shall perform the covenants and obligations contained herein. Donor may engage one or more qualified appraisers to appraise the value of the Donated Assets (the "Appraisal Value"). Donee shall render reasonable cooperation to Donor with respect to any filing by Donor with the Internal Revenue Service in connection with the conveyance of the Donated Assets to Donee.

3. **FCC Application**. Within ten (10) days of the date of this Agreement, the parties hereto will file an application with the FCC (the "FCC Application") for its consent to the



3. **FCC Application.** Within ten (10) days of the date of this Agreement, the parties hereto will file an application with the FCC (the "FCC Application") for its consent to the transactions contemplated by this Agreement. The parties will vigorously prosecute the application, and do all things reasonably necessary and/or appropriate to obtain a grant thereof.

4. **Closing and FCC Consent.** Subject to satisfaction or waiver of the conditions set forth herein, consummation of the conveyance of the Donated Assets under this Agreement (the "Closing") shall occur on a date (the "Closing Date") mutually agreed upon by the parties. The Closing is subject to and conditioned upon grant of the FCC Application. The Closing Date shall be within ten (10) days after the grant of FCC Application, provided, however, if a petition to deny or informal objection is filed with respect to the FCC Application, the Closing Date shall be ten (10) days after the grant of the FCC Application has become a Final Order, unless the requirement of a Final Order is waived by Donee and an earlier Closing Date is set. "Final Order" means an action by the FCC as to which: (a) no request for stay by the FCC is pending, no such stay is in effect, and any deadline for filing a request for any such stay has passed; (b) no appeal, petition for rehearing or reconsideration, or application for review is pending before the FCC, and the deadline for filing any such appeal, petition, or application has passed; (c) the FCC has not initiated reconsideration or review on its own motion, and the time in which such reconsideration or review is permitted has passed; and (d) no appeal to a court, or request for stay by a court, of the FCC's action is pending or in effect, and the deadline for filing any such appeal or request has passed.

5. **Donor's Representation and Warranties.** Because this transaction is a donation, Donor makes absolutely no representations or warranties of any kind with respect to the assets to be conveyed hereunder other than that it is the holder of the FCC Licenses and that the FCC Licenses are in good standing.

6. **Donee's Representations and Warranties.** Because this transaction is a donation, Donee warrants only that it is a non-profit corporation qualified under Section 501(c)(3) of the Internal Revenue Code, is otherwise qualified to receive the Donated Assets, and is legally, financially, and otherwise qualified to be the licensee of, acquire, own, and operate the Station under the Communications Act of 1934, as amended, and the rules, regulations, and policies of the FCC.

7. **Donee's General Covenants.** Donee covenants and agrees that between the date hereof and the Closing, Donee shall:

(a) maintain its qualifications to be the licensee of the Station as set forth in **Section 6** above; and

(b) notify the Donor promptly of any event, circumstance, or occurrence which will interfere with the prompt consummation of this transaction at Closing.

8. **Donor's General Covenants.** Donor covenants and agrees that, between the date hereof and the Closing, Donor shall not directly or indirectly donate, sell, lease, or dispose of any of the Donated Assets unless those assets are replaced with assets of equal or greater value.

9. **Joint Covenants.** Donor and Donee hereby covenant and agree that, between the date hereof and the Closing, they shall cooperate fully with each other in taking any reasonable actions (including to obtain the required consent of any governmental instrumentality or any third party) necessary to accomplish the transactions contemplated by this Agreement, including, but not limited to, the prompt satisfaction of any condition to the Closing set forth herein.

10. **Donor's Conditions to Closing.** The obligations of Donor hereunder are, at its option, subject to satisfaction at or prior to the Closing of each of the following conditions:

(a) The representations and warranties of Donee made in this



its option, subject to satisfaction at or prior to the Closing of each of the following conditions:

(a) The representations and warranties of Donee made in this Agreement shall be true and correct in all material respects as of the Closing Date except for changes permitted or contemplated by the terms of this Agreement, and the covenants and agreements to be complied with and performed by Donee at or prior to the Closing shall have been complied with or performed in all material respects; and

(b) The FCC Consent shall have been obtained and shall be in full force and effect, and no court, administrative, or governmental order prohibiting the Closing shall be in effect.

11. **Donee's Conditions to Closing.** The obligations of Donee hereunder are, at its option, subject to satisfaction at or prior to the Closing of the condition that the FCC Consent shall have been obtained, shall be in full force and effect (and if a petition to deny or informal objection is filed with respect to the FCC Application, the FCC Consent shall have become a Final Order), and no court, administrative, or governmental order prohibiting the Closing shall be in effect.

12. **Closing Deliveries.** At the Closing, Donor shall deliver or cause to be delivered to Donee instruments of conveyance, assignment, and transfer as may reasonably be requested by Donee to convey, transfer, and assign the Donated Assets to Donee. At the Closing, Donee shall deliver or cause to be delivered to Donor such documents and instruments of assumption as may reasonably be requested by Donor for Donee to assume the Donated Assets and to relieve Donor of any liability whatsoever pertaining to prior or future use of the Station's transmitter site.

13. **Legal Expenses, Closing Costs, and Filing Fees.** Each of Donor and Donee will bear its own legal expenses and closing costs connected with this transaction. Any FCC filing fees necessary for the fulfillment of the transaction contemplated herein will be paid by Donor.

14. **Governing Law.** This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Colorado.

15. **Counterparts.** This Agreement may be executed in counterparts with the same effect as if the signature on each counterpart were upon the same instrument.

16. **Notices.** Any notice required hereunder shall be in writing, and any payment, notice, or other communication shall be deemed given when delivered personally, or mailed by certified mail, postage prepaid, with return receipt requested, and addressed as follows:

If to Donor:

4-K's, LLLP
1713 Whilstepig Lane
Broomfield, CO 80020
Attention: James K. Merilatt, Manager

If to Donee:

Open Media Foundation, Inc.
700 South Kalamath Street
Denver, CO 80204
Attention: Tony Shawcross, Executive Director

17. **No Third Party Beneficiaries.** Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person or entity other than the parties hereto and their successors or permitted assigns, any rights or remedies under or by



intended or shall be construed to confer upon or give to any person or entity other than the parties hereto and their successors or permitted assigns, any rights or remedies under or by reason of this Agreement.

18. Severability. The parties agree that if one or more provisions contained in this Agreement shall be deemed or held to be invalid, illegal, or unenforceable in any respect under any applicable law, this Agreement shall be construed with the invalid, illegal, or unenforceable provision deleted, and the validity, legality, and enforceability of the remaining provisions contained herein shall not be affected or impaired thereby, unless such construction would alter the fundamental purposes of this Agreement.

19. Entire Agreement. This Agreement embodies 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.

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

DONOR: 4-K's, LLLP

By: 
James K. Merilatt, Manager

DONEE: OPEN MEDIA FOUNDATION

By: 
Tony Shawcross, Executive Director

5

Schedule 1(a)

FCC Licenses

License: K225BS, Longmont, CO (Facility ID No. 140244) (BLFT- 20170209AAT)

Modification CP: K225BS, Denver, CO (facility ID No. 140244) (BPFT-20180424AAR)

Schedule 1(b)



Schedule 1(b)

Tangible Personal Property

Bric II unit