

DONATION AGREEMENT

THIS DONATION AGREEMENT (this "Agreement") is made on this ¹²~~20~~ day of September, 2017, by and between Cochise Community Radio Corp (hereinafter referred to as "Licensee"), and KUTE, Inc, (hereinafter referred to as "Donee"). Licensee and Donee are sometimes individually referred to in this Agreement as a "Party" and collectively as the "Parties."

WITNESSETH

WHEREAS, Licensee desires to convey all rights, title, and interest in the assets set forth below of FM Broadcast Station KDNM-FM, Reserve, NM (FCC Facility ID No. 175526) (the "Station"), subject to the terms and conditions stated herein; and

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

WHEREAS, this Agreement is subject to the Consent Decree dated May 26, 2017 (the "Consent Decree"), between Licensee and the Federal Communications Commission (the "FCC"); and

WHEREAS, the consummation of 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, Licensee agrees to transfer, assign, convey, and deliver to Donee, and Donee agrees to receive and accept, free and clear of all debts, liens, charges, and assessments of any kind, the following:

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

(b) the broadcast equipment of the Station (the "Equipment") listed in Schedule 1(b).

The FCC Licenses and Equipment are sometimes collectively referred to in this Agreement as the "Donated Assets."

2. **ASSUMED LIABILITIES/EXCLUDED ASSETS**. Licensee will retain any asset not specifically identified on Schedules 1(a) and 1(b) hereto. Donee assumes no liability for periods of time on or before the Closing Date (as defined below) for any debts, or obligations, including without limitation, for Station's personnel or employment contracts, retirement obligations, or any contracts, obligations, or leases of Licensee.

3. **GIFT.** Subject to the prior approval and consent of the FCC, Licensee agrees to convey the Donated Assets to Donee as a gift and, as such, will not require monetary payment from Donee in exchange for said gift, provided, that Donee shall perform the covenants and obligations contained herein.

4. **LICENSEE'S COVENANTS AND WARRANTIES.** Licensee hereby covenants and warrants as follows:

- (a) except as set forth in the Consent Decree, that the FCC Licenses are in full force and effect;
- (b) except as set forth in the Consent Decree, that Licensee is aware of no litigation, proceeding, or investigation whatsoever pending or threatened against or relating to Licensee, 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) that Licensee has good marketable title to all owned Donated Assets;
- (d) that Licensee will convey said Donated Assets to Donee in "as is" and "where is" condition of such assets on the Closing Date and, except as expressly set forth in this Agreement, makes no warranty whatsoever with regard to the condition of said Donated Assets;
- (e) that Licensee has full power and authority to enter into and perform this Agreement, and that upon execution this Agreement will be a valid and binding agreement of Licensee enforceable in accordance with its terms;
- (f) that the Station is currently silent and will remain silent until Closing; and
- (g) that Licensee shall use its reasonable efforts to prosecute the requirements of this Agreement, subject to the provisions herein.

5. **DONEE'S COVENANTS AND WARRANTIES.** Donee hereby covenants and warrants as follows:

- (a) that Donee has full power and authority to enter into and perform this Agreement, and that upon execution this Agreement will be a valid and binding agreement of Donee enforceable in accordance with its terms;
- (b) that Donee is now, and will be at Closing, a 501(c)(3) entity under the U.S. Internal Revenue Code;
- (c) that Donee knows of no reason why it should not be approved to become a holder of the FCC Licenses;
- (d) that Donee has determined that the FCC Licenses and the Equipment to be

conveyed are in satisfactory condition and suitable for Donee's purposes in "as is" and "where is" condition as of the date hereof;

(e) that the Equipment must be removed or picked up by Donee within 10 days after the Closing or it will be forfeited to Licensee for its disposal;

(f) that Donee has read and is familiar with the terms and conditions of the Consent Decree;

(g) that within four (4) years after the Closing Date, as set forth in the Consent Decree, Donee shall not sell or assign the FCC Licenses to any other entity whatsoever except pro forma assignments;

(h) that, following the Closing, Donee shall maintain a copy of this Agreement in the Station's Public File in accordance with the rules of the FCC; and

(i) that the warranties, covenants, and representations contained in this Section 5 shall survive the Closing Date for a period of two (2) years, with the exception of Subsection (g) that shall survive for five (5) years.

6. **FCC ASSIGNMENT APPLICATION.** Both parties hereto agree to file an application with the FCC for consent to the assignment of the FCC Licenses to Donee (the "Assignment Application") within five (5) business days after executing this Agreement, and to cooperate in seeking FCC's consent to assignment of the FCC Licenses from Licensee to Donee. The Consent Decree requires, unless waived by the Licensee and the FCC or already so designated, that the Station's FCC License and its underlying FCC allocation be designated as Non-Commercial. Donee will pay all costs required for filing and prosecuting an application, if necessary, for such designations.

7. **FCC ACTION.** If the FCC has refused or failed to grant the Assignment Application within 6 months of the date of this Agreement, either Party hereto may cancel this Agreement by giving the other Party written notice of such intent. Upon the exercise of a Party's right to terminate this Agreement in accordance with this Section 7, except for expense reimbursement set forth in Section 17, neither Party shall have any further rights, duties, obligations, or liabilities under this Agreement to the other Party.

8. **CLOSING.** Closing (the "Closing" or "Closing Date") shall take place via electronic exchange of documents within ten (10) days after the date of the grant of FCC consent to the assignment of the FCC Licenses to Donee.

9. **STATION CONTROL.** Prior to Closing, Licensee shall have complete control over the Donated Assets and operation of the Station. Donee shall have the right to reasonable access to Station's logs and other records as to the operation of the Station prior to Closing and to inspect the Donated Assets. Upon Closing and the transfer and assignment of the Donated Assets, as contemplated herein, the Donee shall have complete control over the Donated Assets and operation of Station.

10. **INDEMNIFICATION.** Donee shall indemnify, defend, save, and hold Licensee harmless with respect to any and all claims, losses, obligations, liabilities, costs, and expenses, including reasonable counsel fees, threatened, suffered, incurred, or sustained by Licensee by reason of any misrepresentations by Donee, any breach by Donee of this Agreement or of any of Donee's warranties, covenants, or representations contained in this Agreement, or arising from, or by reason of Donee's ownership of, the Donated Assets or operation of the Stations subsequent to the Closing Date hereunder. This Section 10 shall survive the Closing for five (5) years.

11. **CLOSING DOCUMENTS.** Licensee will at Closing execute and deliver to Donee customary assignments, instruments, and other documents sufficient to grant to Donee title to the Donated Assets, free and clear of debts, claims, assessments, or liens of any kind.

12. **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. Properly 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 Donee:

KUTE, Inc.
PO Box 737
123 Capote Drive
Ignacio, CO 81137
Attn: Ms. Tami Graham
Executive Director

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

Ernest T. Sanchez, Esq.
The Sanchez Law Firm P.C.
1155 F Street N.W.
Suite 1050
Washington, DC 20004

If to Licensee:

Cochise Community Radio Corp
PO Box 11060
Jackson, Wyoming 83002

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

Susan A. Marshall, Esq.
Fletcher, Heald & Hildreth, PLC

1300 North 17th Street, Suite 1100
Arlington, VA 22209

13. **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.

14. **ASSIGNMENT.** Except as is provided in this Section 14 and Section 5(g) above, neither Party shall assign any right under this Agreement nor delegate any duty under this Agreement unless the other Party has consented to any such assignment or delegation in writing. This document shall be binding on the heirs, successors, and permitted assigns of the Parties hereto.

15. **CALLSIGN.** Prior to Closing, Licensee may transfer the Station callsigns to any other station owned or controlled by Licensee or related companies and Donee shall select a new callsign for the Station.

16. **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.

17. **FURTHER ACTIONS.** The Parties shall take any actions and execute any other documents that may be necessary or desirable to prosecute this Agreement. Donee shall be responsible for all its costs and expenses regarding this Agreement and Donee shall reimburse Licensee for all Licensee's cost and expenses for any such Licensee actions either required or requested incurred by Licensee after the filing date of the Assignment Application.

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

19. **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 Licensee and Donee 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.

20. **CONSENTS.** 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 Section 13.

21. **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.

COCHISE COMMUNITY RADIO CORP

By: Ted Tucker

Name: Ted Tucker

Title: President

KUTE, INC.

By: [Signature]

Name: Yami Graham

Title: Executive Director

Table of Schedules and Attachments

Schedule 1.1(a)	FCC Licenses
Schedule 1.1(b)	Inventory of Equipment

Schedule 1.1(a)

List of Licenses, Permits and Authorizations

Station Call Sign:	KDNM Facility ID No.: 175526
Community of License:	Reserve, NM
Frequency:	90.1 MHz
Most Recent Renewal File No.:	BRED-20130603AER (Accepted for Filing)
License Expiration:	10/01/2013
Pending Construction Permit(s):	None

Schedule 1.1(b)

Inventory of Equipment

KDNM, Facility ID No.175526, Reserve, New Mexico

SHIVELY 6812-1

Andrew LDF4-50A Helix 50 Feet with N Connectors

FM 250 W Transmitter with Bext Exciter

Equipment Rack

Miscellaneous Power and other cabling

Note: This equipment list is subject to revision by Licensee at closing based on modification of the Station's facilities or equipment damage, failure, removal, substitution, replacement or loss. All equipment is 'as is' and "where is".