

## **FACILITIES MODIFICATION AGREEMENT**

This FACILITIES MODIFICATION AGREEMENT (the “Agreement”) is entered into on May 27, 2005, by and between Salem Media of Oregon, Inc., an Oregon corporation (“Salem”), GCC Bend, LLC, an Oregon limited liability company (“Bend”) (Bend and Salem each a “Party” and collectively the “Parties”) and the law firm of Fletcher, Heald & Hildreth, PLC, a Virginia professional limited liability company (“Escrow Agent”) solely with respect to its duties hereunder as Escrow Agent.

### **RECITALS**

**WHEREAS**, Salem is the licensee of Station KPDQ-FM, Portland, Oregon, Facility ID 58629, and Bend is the licensee of Station KXIX(FM), Bend, Oregon, Facility ID 49913;

**WHEREAS**, Salem filed with the Federal Communications Commission (“FCC”) a minor change construction permit application (BPH-20040824ABG) on August 24, 2004, wherein Salem proposed to upgrade the facilities of Station KPDQ-FM from a Class C2 facility operating on Channel 230, as allotted for use by KPDQ-FM in the FCC’s Report and Order in MB Docket 02-136, to a Class C1 facility operating on Channel 230 (the “KPDQ-FM Application”);

**WHEREAS**, the KPDQ-FM Application satisfies the minimum distance separation requirements of FCC Rule Section 73.207 with the exception of separation from Station KXIX(FM), and Salem has asked in the KPDQ-FM Application that the FCC reclassify Station KXIX(FM) as a Class C0 facility pursuant to Note 4 of FCC Rule Section 73.3573;

**WHEREAS**, in response to an Order to Show Cause (the “Order”), issued by the FCC on January 26, 2005, Bend notified the Commission on February 23, 2005 (the “Notice”), that it intends to file by August 22, 2005, a minor modification application to modify Station KXIX(FM) to specify the minimum Class C height above average terrain; and

**WHEREAS**, Salem remains desirous of obtaining a grant by the FCC of an upgrade of KPDQ-FM’s Channel from C2 to C1 and is prepared to compensate Bend for its cooperation to that end and for actions by Bend which would make that grant possible, all in accordance with the terms of this Agreement, and Bend is willing to cooperate with Salem and to perform in consideration of agreed upon compensation by Salem, all in accordance with the terms of this Agreement;

**NOW, THEREFORE**, taking the foregoing into account, and in consideration of their mutual promises and the terms, conditions and covenants set forth herein, the Parties, intending to be legally bound, hereby agree as follows:

**(1) FCC ACTIONS**

- (a) **By Bend.** Within ten (10) days of Bend’s receipt of a construction permit application and related engineering statement prepared for Bend by Salem’s consulting engineers at Salem’s expense specifying reclassification of the KXIX license from Channel 231C to 231C0 but with no other changes to the KXIX licensed facilities (specifying the coordinates given in BMLH-20040702AFL), and requesting processing pursuant to FCC Rule Section 73.215 with respect to the KPDQ-FM Application as the KPDQ-FM Application will be amended pursuant to paragraph (1)(b) hereof, but not

earlier than the day on which Salem files the amendment to the KPDQ-FM Application specified in paragraph (1)(b) hereof, consistent with the terms of paragraph (1)(c) hereof Bend shall file that application (the “KXIX Application”) with the FCC. Concurrent with the filing of the KXIX Application, Bend shall also file a request for withdrawal of the Notice and expressly advise the Commission that it does not intend to file a minor modification application to propose Class C facilities for Station KXIX pursuant to Note 4 of Section 73.3573.

(b) **By Salem.** Salem shall prepare and provide to Bend the KXIX application and engineering material described in paragraph 1(a) within ten (10) days of the date hereof. Salem shall prepare and file an amendment to the KPDQ-FM Application to propose operation with 52 KW ERP (beam tilt max.) non-directionally and to request processing pursuant to Section 73.215 with respect to the facility applied for in the KXIX Application, including KXIX’s requested channel reclassification and Section 73.215 status (the “KPDQ-FM Amended Application”).

(c) **By Bend and Salem.** The KXIX Application and the KPDQ-FM Amended Application shall be filed pursuant to FCC Rule Section 73.3517(e), including the filing of this Agreement with the amount of financial consideration redacted, upon not less than two business days prior notice by Salem to Bend, such notice to be given no later than ten (10) days after delivery to Bend of the KXIX application and engineering material described in paragraph 1(a).

## (2) CONSIDERATION

- (a) For and in consideration of Bend's performance of this Agreement, Salem shall (i) arrange and pay for the preparation of the engineering statement to be filed with the KXIX Application proposing the modification of Station KXIX as specified in Section 1(a) and the FCC filing fee for the KXIX Application; and (ii) pay to Bend \_\_\_\_\_ (the "Payment"), at a time and in the manner set forth herein.
- (b) The Payment is to be deposited by Salem with the Escrow Agent, to be held in an interest-bearing account, upon the execution of this Agreement.
- (c) The Payment shall be transmitted to Bend by wire transfer or such other means of cash equivalent as Bend may reasonably specify, within one (1) business day of Escrow Agent receiving each of the following, provided that Bend shall have provided Escrow Agent payment directives no less than two (2) business days prior thereto, and provided further that Bend shall not have rescinded any of the actions specified in Section 1(a) of this Agreement:
- (i) A receipt demonstrating that the KXIX Application has been filed electronically with the FCC;
  - (ii) A copy of a date-stamped receipt from the Office of the Secretary of the Commission documenting the filing with the Commission of the withdrawal of the Notice.

### **(3) PAYMENT/TERMINATION**

- (a) It is expressly agreed that the sole conditions precedent to payment of the Payment to Bend is Bend's completion of the actions as set forth in Section 2(c) (either directly or through counsel or representatives), whereupon, without any further action or notification of any kind, Escrow Agent shall transmit the Payment to Bend, and transmit any interest gained on the Payment to Salem, within the time provided in Section 2(c). The Parties acknowledge and agree that Salem shall bear all risk that the benefit to Salem of the upgrade of KPDQ-FM to C1 classification contemplated herein may not be available due to any reason (including interpretation of or changes in applicable facts or law), other than material breaches by Bend of its express covenants herein.
- (b) Bend acknowledges that the obligations it undertakes herein are of a special, unique and extraordinary nature and that if it breaches any of its obligations and covenants under this Agreement, Salem shall have, in addition to any other rights it may have, the right to seek injunctive relief and/or specific performance. Bend agrees to waive any defense to an action brought by Salem for equitable relief that Salem's remedy at law is adequate, to waive any requirement that Salem post bond or other security or that Salem prove irreparable harm, and to interpose no opposition, legal or otherwise, to the propriety of injunctive relief or specific performance as a remedy; provided, however, that no specification in this Agreement of a particular legal or equitable remedy of Salem shall be construed as a waiver or prohibition of Salem pursuing any other legal or equitable remedies in the event of a breach by Bend of this Agreement. If either Party commences an action for any remedy available under this Agreement,

the prevailing Party shall be entitled to reimbursement from the other Party of its reasonable legal fees and expenses.

- (c) In the event of a breach by Bend of its obligations under this Agreement, as those obligations are specified in Section 1(a), and the Escrow Agent is notified by Salem that the breach has occurred and that the breach has not been cured within fourteen (14) days following notice to Bend thereof and a demand is made by Salem that the Payment be refunded to Salem, that notice and demand shall be promptly sent, as a notice under this Agreement, by the Escrow Agent to Bend, as specified in paragraph (6)(c) hereof. If Bend does not object in writing to the Escrow Agent within fourteen (14) days of having received the notification of breach and demand from the Escrow Agent, the Escrow Agent shall promptly pay the Payment to Salem, this Agreement shall be terminated and neither Party shall have any further liability to the other hereunder. If a timely objection is made to the Escrow Agent, the Payment shall continue to be held by the Escrow Agent until direction is provided to the Escrow Agent by a court of competent jurisdiction as to the disposition of the Payment.

#### **(4) COVENANTS**

- (a) During the pendency of the KPDQ-FM Amended Application and the KXIX Application, and until actions on those applications become Final Actions (as defined below), neither Party shall take any action, or file or procure the filing of any petition, complaint, or other submission that would delay grant of, or seek denial or dismissal of, the KPDQ-FM Amended Application or the KXIX Application. In addition, the

Parties agree that they shall take all reasonable steps to ensure that the KPDQ-FM Amended Application and the KXIX Application are granted, and such grants become Final Actions (as defined below), including, without limitation, the provision of any additional information reasonably requested by the FCC and the filing of amendments either requested by the FCC or which are necessary to satisfy FCC requirements. A Final Action is an action that is no longer subject to reconsideration, review or appeal by the FCC or any court of competent jurisdiction, with no timely-filed request for or notice of reconsideration, review or appeal then pending.

- (b) This Agreement shall not be interpreted to prevent either Party from filing and prosecuting an application of its own design to modify its facility at any time after the FCC's grants of both the KPDQ-FM Amended Application and the KXIX Application have become Final Actions, or this Agreement has been terminated pursuant to Section 3(c) without the grant of both the KPDQ-FM Amended Application and the KXIX Application; provided, however, that either Party may file and prosecute such an application for its station if that application would not under any circumstances have an adverse affect on the application of the other Party identified in paragraph (1)(a) or (b) hereof.
- (c) Bend covenants to assign or transfer control of Station KXIX only to an assignee or transferee that has assumed in writing all of Bend's rights and obligations under this Agreement, and to provide an exact copy of that writing to Salem prior to the filing of an assignment or transfer application with the FCC. Salem covenants to assign or transfer control of KPDQ-FM only to an assignee or transfer that has assumed in

writing all of Salem's rights and obligations under this Agreement, and to provide an exact copy of that writing to Bend prior to the filing of an assignment or transfer application with the FCC.

#### **(5) REPRESENTATIONS AND WARRANTIES**

Each Party represents and warrants to the other that: (a) it is legally qualified, empowered and able to enter into this Agreement; (b) the execution and performance of this Agreement do not violate nor conflict with its organizational documents nor with any agreement, arrangement, understanding or restriction to which it is subject; (c) each is the authorized legal holder of the FCC authorizations for its respective station; (d) such authorizations are in full force and effect and not subject to any restrictions or limitations that would impair such party's ability to fully and timely perform its obligations under this Agreement; (e) to such Party's knowledge and belief there are no pending or threatened proceedings or claims, other than proceedings which may affect substantial numbers of FM broadcast stations generally, which are reasonably likely to result in the adverse modification of such station authorizations or such Party's ability to fully and timely perform its obligations under this Agreement; and (f) such party is in compliance in all material respects with all laws, regulations and rules applicable to its respective station.

#### **(6) OTHER PROVISIONS**

- (a) This Agreement sets forth the entire understanding of the Parties hereto at the time of execution and delivery hereof with respect to the subject matter hereof and may not be amended except by written amendment signed by both Parties. All prior



agreements between the Parties with respect to the subject matter hereof shall be of no further force or effect. The undersigned each represent and warrant that each has the requisite authority to bind their respective Parties to the terms and obligations of this Agreement.

- (b) If any term or provision of this Agreement is determined to be void, unenforceable or contrary to law, (i) the remainder of this Agreement shall continue in full force and effect provided that such continuation would not materially diminish the benefits of this Agreement for either Party and (ii) the Parties shall negotiate in good faith to amend this Agreement so as to comply with such legal defects while preserving as fully as possible their original intent, as expressed in the provisions hereof.
- (c) All notices shall be deemed conclusively to have been given upon receipt if the same is in writing, signed by an officer of the Party providing the notice and mailed, by registered or certified U.S. mail, postage prepaid, or delivered by courier service or hand delivery to the notice address or such future modified address as may be specified by advance written notice.

If to Salem:

Jonathan L. Block  
4880 Santa Rosa Road  
Camarillo, CA 93012  
805-987-0400 – Telephone  
805-384-4505 – Telecopier

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

James P. Riley, Esquire

Fletcher, Heald & Hildreth, P.L.C.  
1300 N. 17<sup>th</sup> Street, 11<sup>th</sup> Floor  
Arlington, VA 22209  
703-812-0450 – Telephone  
703-812-0486 – Telecopier

If to Bend: John B. Gross, President  
2301 Lucien Way  
Suite 180  
Maitland Colonnades  
Maitland, FL 32751  
(407) 647-5557 - Telephone  
(407) 647-8815 - Telecopier

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

Vincent A Pepper, Esquire  
Womble Carlyle Sandridge & Rice  
Seventh Floor  
1401 Eye Street, N.W.  
Washington, DC 20005  
202-467-6900 – Telephone  
202-467-6910 – Telecopier

If to Escrow Agent:

James P. Riley, Esquire  
Fletcher, Heald & Hildreth, P.L.C.  
1300 N. 17<sup>th</sup> Street, 11<sup>th</sup> Floor  
Arlington, VA 22209  
703-812-0450 – Telephone  
703-812-0486 – Telecopier

- (d) This Agreement may be signed in counterparts with the same effect as if the signature on each counterpart were on the same instrument.

- (e) This Agreement shall be governed by and construed according to the laws of the State of Oregon, specifically excluding its choice-of-laws provisions.
- (f) Except as otherwise provided in this Agreement, each Party shall pay its own expenses incurred in connection with the authorization, preparation, execution, and performance of this Agreement, including all fees and expenses of counsel, accountants, agents, and representatives.
- (g) The Parties and Escrow Agent acknowledge that Escrow Agent serves as legal counsel to Salem and intends to continue to serve in such capacity. The Parties agree to waive any potential conflict between Escrow Agent's role as such legal counsel to Salem and its duties as Escrow Agent hereunder, provided, however, that at all times Escrow Agent shall act strictly in accordance with the requirements of the escrow-related provisions of this Agreement, such that Escrow Agent's representation of Salem shall not in any way delay or impair Escrow Agent's performance of the specific duties imposed upon Escrow Agent hereunder.

THIS SPACE DELIBERATELY LEFT BLANK

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the date first written above.

**SALEM MEDIA OF OREGON, INC.**

By: \_\_\_\_\_/s/\_\_\_\_\_  
Name: Jonathan L. Block  
Its: Vice President and Secretary

**GCC BEND, LLC**

By: \_\_\_\_\_/s/\_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**FLETCHER, HEALD & HILDRETH, P.L.C.  
As Escrow Agent**

By: \_\_\_\_\_/s/\_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_