

1 MARK E. BERGHAUSEN (S.B. #278968)
2 O'MELVENY & MYERS LLP
2765 Sand Hill Road
Menlo Park, CA 94025-7019
3 Telephone: (650) 473-2600
Facsimile: (650) 473-2601

4 B. ANDREW BEDNARK (*pro hac vice* forthcoming)
5 O'MELVENY & MYERS LLP
7 Times Square
6 New York, NY 10036
Telephone: (212) 326-2000
7 Facsimile: (212) 326-2061

8 Attorneys for Plaintiffs
LocusPoint Networks, LLC and
9 LocusPoint II KCSM, LLC

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN MATEO

13 LOCUSPOINT NETWORKS, LLC,
14 a Delaware Limited Liability Company, and
15 LOCUSPOINT II KCSM, LLC,
16 a Delaware Limited Liability Company,

17 Plaintiffs,

18 v.

19 SAN MATEO COUNTY COMMUNITY
COLLEGE DISTRICT and RURAL
20 CALIFORNIA BROADCASTING
CORPORATION,

21 Defendants.

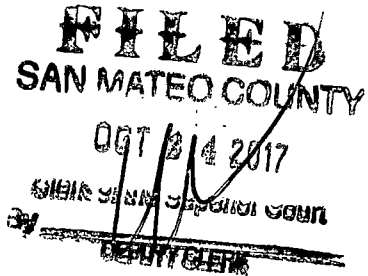
Case No.

17CIV04899

22 VERIFIED COMPLAINT FOR
23 (I) BREACH OF CONTRACT,
(II) BREACH OF THE IMPLIED
COVENANT OF GOOD FAITH AND
FAIR DEALING,
(III) VIOLATIONS OF THE PUBLIC
RECORDS ACT (CAL. GOV. CODE §
6250 ET SEQ.),
(IV) INTENTIONAL INTERFERENCE
WITH CONTRACTUAL RELATIONS,
AND
(V) VIOLATIONS OF THE UNFAIR
COMPETITION LAW (CAL. BUS. &
PROF'L CODE § 17200 ET SEQ.)

24 BY FAX

25 17-CIV-04899
CMP
Complaint
781536



1 LocusPoint Networks, LLC and LocusPoint II KCSM, LLC (“LPN”), by and through
2 their undersigned counsel, for their complaint against the San Mateo County Community College
3 District (“the District”) and Rural California Broadcasting Corporation (“RCB”), respectfully
4 allege, upon knowledge as to their own actions and information and belief as to others’ actions, as
5 follows:

6 **NATURE OF THE ACTION**

7 1. This is an action to prevent the District from exploiting its contractual breaches to
8 enrich itself at LPN’s expense. LPN seeks to prevent the District from disposing of a unique and
9 valuable asset, the television station KCSM-TV, that LPN had subsidized since 2013. Now,
10 rather than fund KCSM itself, the District has arranged a shotgun-wedding sale to its accomplice,
11 RCB, in violation of the District’s contracts with LPN—a sale that would not and could not occur
12 had the District performed its contracts with LPN in the first place by selling KCSM’s broadcast-
13 spectrum rights in the FCC’s 2016 auction.

14 2. The District and LPN entered three contracts in May 2013 under which LPN
15 agreed to provide up to \$3.6 million of needed funding to KCSM, which the District had been
16 operating at a nearly \$1 million annual loss. In exchange, the District agreed to give LPN a share
17 of the potential future proceeds it could receive by bidding to sell KCSM’s broadcast-spectrum
18 usage rights in a special auction (the “Auction”) that the Federal Communications Commission
19 (“FCC”) would conduct at a future date. While the District agreed to “take all actions necessary”
20 to sell KCSM’s spectrum rights in the Auction, the parties also agreed to two scenarios in which
21 KCSM could be sold outside the Auction—a “Call Option Sale” at LPN’s option and a “Put
22 Option Sale” at the District’s option, provided that the District had otherwise performed its
23 obligations. Other than in those two scenarios, under which LPN would receive the same
24 percentage of the sale proceeds, the District agreed not to sell KCSM, but rather to continue
25 operating it as usual until an “Auction Sale, Call Option Sale or Put Option Sale” had occurred.
26 These restrictions were so important that the parties agreed they could be specifically enforced
27 because money damages could not adequately compensate a breach.

1 3. The District appointed three of its officers as the only individuals authorized to
2 place bids on its behalf in the Auction. On November 15, 2016, one of the District's authorized
3 bidders failed to enter a bid to sell KCSM's spectrum rights in the Auction, breaching the
4 District's contracts with LPN. As a result, KCSM was permanently dropped from the Auction.

5 4. But the District did not let its breach get in the way of taking LPN's funding. To
6 the contrary, the District (i) signed a Bid Submission Confirmation Sheet falsely stating that it
7 had submitted a bid, and (ii) falsely certified that it had performed its obligations so LPN would
8 in turn continue its quarterly payments to the District. After LPN discovered the District's
9 breaches, it asserted claims against the District on February 21, 2017. Those claims are the
10 subject of a separate action in this Court, *LocusPoint Networks, LLC et ano. v. San Mateo Cty.*

11 *Cnty. Coll. Dist.*, No. 17 Civ. 1550 (San Mateo Cty. Super. Ct.) (the "Auction Litigation").¹

12 5. Unable to continue deceiving LPN into bankrolling KCSM, the District decided
13 simply to sell KCSM outside the procedures to which it and LPN had agreed, rather than continue
14 to operate the station at its own expense. Furthermore, the District planned to keep the sale
15 proceeds for itself, even though (i) LPN's subsidies had kept KCSM afloat since 2013, and
16 (ii) the District continued to own KCSM only because it had breached its obligation to LPN to
17 enter a bid in the Auction. The sale, another deliberate breach, would thus rob LPN of the nearly
18 \$3.4 million it had contributed to KCSM without providing a cent of the proceeds the District had
19 promised in return.

20 6. The District found a willing accomplice in RCB, which wanted KCSM's spectrum
21 and Bay Area presence after it agreed to sell spectrum rights for its own station, KRCB, in the
22 Auction—a sale that netted it nearly \$72 million. The District and RCB began discussions in
23 February 2017, as soon as the FCC lifted a restriction on communications between Auction
24 participants.

25 7. Meanwhile, the District, which was bound by California law and its own Board
26 policies to conduct a public bidding and auction process if it were to sell KCSM, embarked on a

27 _____
28 ¹ The Auction Litigation is consolidated with *San Mateo Cty. Cnty. Coll. Dist. v. LocusPoint Networks, LLC et al.*, No. 17 Civ. 1534 (San Mateo Cty. Super. Ct.).

1 course that was public in name only, and designed to ensure that RCB submitted the highest bid.
2 The District issued a request for proposals to acquire KCSM (the “RFP”) on June 13, 2017, but
3 did not post it on its website or otherwise publish it online. The District’s Board of Trustees
4 never publicly authorized or addressed the RFP, until it called a meeting three months later on 24
5 hours’ notice to approve the terms of the sale to none other than RCB. Even at that September 6,
6 2017 meeting, the District tried to hide RCB’s identity, revealing it only after a question from one
7 of the handful of attendees of the hastily arranged meeting. To no one’s surprise, the Board
8 rubber-stamped the terms of the sale to RCB without any discussion or debate.

9 8. LPN, which had questioned the District’s process and provided notice of its
10 contractual rights on August 10, 2017, immediately requested the District’s public records about
11 the sale under the California Public Records Act. Among other records, LPN asked for the
12 documents behind the District’s vague, conclusory representations that it “gave required public
13 notice of the RFP” and had notified a “number” of potential bidders.

14 9. The District continued to hide those facts. It accelerated its plan to ratify the
15 KCSM sale agreement with RCB by calling another special meeting—and then purposely
16 rescheduling the meeting time without changing the “Call to Order” on the public agenda. In a
17 near-empty room, the Board of Trustees voted to ratify the KCSM sale agreement in a four-
18 minute September 20, 2017 meeting that was purely a formality, as the sale to RCB was and had
19 always been a foregone conclusion. The next day, September 21, the District acknowledged
20 LPN’s Public Records Act request for the first time—in other words, after it had first rushed to
21 ratify the KCSM sale agreement without disclosing the records LPN had requested.

22 10. The District’s plot, however, was a naked violation of the Public Records Act and
23 the Brown Act, California’s open-meeting law, which nullified its ratification of the KCSM sale
24 agreement. After LPN called out the District’s behavior on September 25, 2017, the District was
25 forced to rescind the ratification and hold a properly noticed vote on October 11, 2017. The
26 District still has not disclosed public records about the sale that LPN requested, which California
27 law required it to produce before ratifying the KCSM sale agreement.

28

1 11. The agreement makes plain that RCB agreed to purchase KCSM with full
 2 knowledge of LPN's contractual rights—but proceeded anyway because the District agreed to
 3 protect RCB from liability, including by paying its legal fees. The agreement discloses (i) the
 4 Auction Litigation; (ii) the existence of the District's contracts with LPN, which are publicly
 5 available; and (iii) LPN's rights to prevent the sale. But RCB nevertheless signed up because the
 6 District (i) granted termination rights if LPN were to enforce its contracts with the District or
 7 name RCB as a defendant, (ii) would reduce the KCSM purchase price by the amount of RCB's
 8 legal fees as a result of such litigation, and (iii) would indemnify RCB against "any and all"
 9 liability resulting from LPN's enforcing its rights.

10 12. LPN seeks, among other things, an order (i) compelling the District's specific
 11 performance of its contractual obligation not to sell KCSM except as allowed under its contracts
 12 with LPN, and (ii) enjoining the consummation of the KCSM sale agreement as a breach of the
 13 District's contractual obligations to LPN and as an unlawful business practice under California
 14 law based on RCB's intentional interference with LPN's contractual rights. Allowing the sale to
 15 proceed would allow the District and RCB to profit from disregarding LPN's rights—for which
 16 LPN has paid the District nearly \$3.4 million—through a sale that would not and could not occur
 17 in the first place if the District had fulfilled its contractual obligation to LPN to enter a bid in the
 18 Auction conducted by the FCC.

19 **THE PARTIES**

20 13. Plaintiff LocusPoint Networks, LLC is a Delaware limited liability company with
 21 its principal place of business in Pleasanton, California.

22 14. Plaintiff LocusPoint II KCSM, LLC is a Delaware limited liability company with
 23 its principal place of business in Pleasanton, California.

24 15. On information and belief, Defendant San Mateo County Community College
 25 District is a community college district operating three colleges (Cañada College, College of San
 26 Mateo and Skyline College) located in San Mateo County, California.

1 23. The District and LPN’s contractual relationship was the product of a 2011–13
2 process in which the District sought funding for KCSM, which it had been operating at an
3 approximately \$1 million annual loss. The District sought a third party to subsidize KCSM until
4 it could participate in the FCC’s special auction, mandated in legislation enacted by Congress in
5 2012, at which licensees such as the District could bid to sell their broadcast-spectrum usage
6 rights (the “Auction”). The District and LPN documented their rights and obligations in the May
7 16, 2013 Funding Agreement, Bid Management Agreement, and Put/Call Option Agreement
8 (collectively, the “LPN Contracts”).

9 24. Through the Funding Agreement and Put/Call Option Agreement, LPN agreed to
10 subsidize the District’s operation of KCSM up to \$3.6 million in quarterly payments in exchange
11 for a share of the proceeds from (i) the District’s relinquishment of KCSM’s spectrum-usage
12 rights in the Auction, or alternatively, (ii) the sale of KCSM either at LPN’s option (the “Call
13 Option Sale”) or the District’s option (the “Put Option Sale”).³ The District could not exercise
14 the Put Option, however, if it had materially breached any of the LPN Contracts.⁴

15 25. In exchange for LPN’s subsidy payments, the District promised (among other
16 things) that (i) KCSM would “participate in the Auction”⁵; (ii) it would designate “up to three
17 individuals who shall serve as the District’s authorized bidders during the Auction” who would be
18 “authorized to place bids on behalf of the District during the Auction”⁶; (iii) it would “take all
19 actions necessary to cause the spectrum usage rights associated with [KCSM’s] FCC License to
20 be relinquished in the Auction”⁷; and (iv) it would certify before receiving each quarterly subsidy
21 payment from LPN that it had “performed in all material respects” its contractual obligations.⁸

22
23 ³ Funding Agreement § 2.1 (attached as Exhibit B); Put/Call Option Agreement §§ 1–4 (attached
as Exhibit C).

24 ⁴ Ex. C (Put/Call Option Agreement) § 4.c.i.

25 ⁵ Ex. C (Put/Call Option Agreement) § 10.b.

26 ⁶ Amendment to Bid Management Agreement (Dec. 8, 2015) § 1.1 (attached as Exhibit D); *see*
27 *also generally* Bid Management Agreement (attached as Exhibit B to the complaint in *LocusPoint*
Networks, LLC et ano. v. San Mateo Cty. Cmty. Coll. Dist., No. 17 Civ. 1550 (San Mateo Cty.
Super. Ct.) (Apr. 10, 2017)).

28 ⁷ Ex. B (Funding Agreement) § 6.9.

⁸ Ex. B (Funding Agreement) § 3.2.

1 26. The District agreed that it would continue to operate and would not sell KCSM
2 until an Auction Sale, Call Option Sale, or Put Option Sale. The District committed to “operate
3 the Station, and perform all of its obligations with respect thereto, in the ordinary course of
4 business consistent with past practices” until an “Auction Sale, Call Option Sale, or Put Option
5 Sale,” whichever happens first.⁹

6 27. In addition to continuing to operate KCSM, the District agreed to conditions on its
7 sale. The District agreed not to discuss selling KCSM with another party until an “Auction Sale,
8 Call Option Sale, or Put Option Sale”: the District “will . . . not solicit, initiate or hold
9 discussions with any other party . . . with respect to any sale of the Station, except as permitted
10 in” the LPN Contracts.¹⁰

11 28. And the District promised not to sell KCSM except through an Auction Sale, Call
12 Option Sale, or Put Option Sale, unless the District had first satisfied all its obligations to LPN:
13 the District “covenants and agrees that, until the earlier of (i) the payment in full of all of the
14 Reimbursement Obligations” (defined as “all obligations of every nature of [the District] from
15 time to time owed to LPN under the Funding Documents,” such as LPN’s share of the proceeds
16 from an Auction Sale or Call Option Sale) “and (ii) the consummation of any Auction Sale, Call
17 Option Sale or Put Option Sale,” the District “shall not convey, sell . . . or otherwise dispose of, in
18 one transaction or a series of transactions, substantially all of its business, property or assets . . .
19 used in connection with the operation of the Station . . . other than in connection with the
20 transactions contemplated by the Option Agreement”—i.e., the Auction Sale, Call Option Sale, or
21 Put Option Sale.¹¹

22 29. The Auction Litigation concerns the District’s breach of its obligation to place bids
23 in the Auction. As the complaint alleges, the District filed an application to participate in the
24

25 ⁹ Ex. C (Put/Call Option Agreement) § 10.c.ii; *see also* Ex. B (Funding Agreement) § 6.8
26 (obligating the District to “continue to operate the Station in substantially the same manner as
27 operated prior to” May 16, 2013).

28 ¹⁰ Ex. C (Put/Call Option Agreement) § 10.c.iii.

¹¹ Ex. B (Funding Agreement) § 7.3; *id.* at 6 (defining “Reimbursement Obligations”); *see, e.g.*,
Ex. C (Put/Call Option Agreement) §§ 2.a, 3.a, 4.a.

1 Auction on January 6, 2016, and designated three of its officers as its authorized bidders.¹² Under
2 FCC procedures, only those three District personnel could receive and use an electronic code key
3 (a “SecurID token”) from the FCC to “place bids for the applicant during the auction.”¹³

4 30. After successfully logging into the FCC Reverse Auction Bidding System and
5 participating in 52 rounds in which a bid was potentially required, the District’s authorized bidder
6 failed to submit a bid in Stage 3, Round 23, on November 14, 2016.¹⁴ In the presence of a
7 consultant that LPN had retained because FCC “Quiet Period” rules prohibited LPN and the
8 District from communicating directly about the District’s bids or bidding strategy, the District
9 bidder (i) falsely signed a Bid Submission Confirmation Sheet stating that she had submitted a
10 bid; (ii) failed to follow the normal procedure of generating a Bid Summary confirmation directly
11 from the FCC Auction website; and (iii) failed to verify the bid submission during the remaining
12 approximately 48 minutes that Round 23 bidding remained open.¹⁵ The District was therefore
13 permanently dropped from the Auction.¹⁶

14 31. Nevertheless, the District continued to certify to LPN that it had “performed in all
15 material respects all agreements” with LPN so it would continue to receive LPN’s quarterly
16 subsidy payments to fund KCSM.¹⁷ In reliance on the District’s false certification, LPN paid
17 \$225,000 to the District on December 20, 2016.¹⁸ The District did not alert LPN about the falsity
18 of this certification (and the subsidy payment it induced) even after the FCC’s Quiet Period ended
19 on February 6, 2017.¹⁹ When LPN discovered the District’s breaches, it exercised its contractual
20 right to discontinue subsidy payments on February 21, 2017.²⁰

21
22
23 ¹² Complaint ¶¶ 68–69, *LocusPoint Networks, LLC et ano. v. San Mateo Cty. Cmty. Coll. Dist.*,
No. 17 Civ. 1550 (San Mateo Cty. Super. Ct.) (Apr. 10, 2017) (attached as Exhibit E).

24 ¹³ FEDERAL COMMUNICATIONS COMMISSION, DA 15-1252, INSTRUCTIONS FOR FCC FORM 177
APPLICATION TO PARTICIPATE IN THE REVERSE AUCTION (AUCTION 1001) (2015).

25 ¹⁴ Ex. E (Auction Litigation Complaint) ¶¶ 81, 86–87.

26 ¹⁵ Ex. E (Auction Litigation Complaint) ¶¶ 83, 88–90.

27 ¹⁶ Ex. E (Auction Litigation Complaint) ¶¶ 91–92.

28 ¹⁷ Ex. E (Auction Litigation Complaint) ¶¶ 95–97.

¹⁸ Ex. E (Auction Litigation Complaint) ¶¶ 96–97.

¹⁹ Ex. E (Auction Litigation Complaint) ¶¶ 99–100.

²⁰ Ex. A (Feb. 21, 2017 claims letter) at 7–8.

1 **To Avoid Funding KCSM, the District Rushes to Sell the Station Despite Its Contractual**
2 **Obligations Not to Do So**

3 32. After its failure to enter a bid in the Auction was revealed, the District could no
4 longer mislead LPN and lost its right to LPN's subsidy payments. Rather than fund KCSM itself,
5 the District quickly decided to hold a fire sale, disregarding the commitments it had made to LPN
6 not to do so.

7 33. In February 2017, the District first spoke to RCB, a public broadcaster that would
8 soon receive proceeds of nearly \$72 million from the Auction for moving its station, KRCB, from
9 transmitting on a channel in the UHF band to one in the low-VHF band. KCSM offered RCB the
10 opportunity to double its potential viewership from three million to six million because of
11 KCSM's wide Bay Area coverage, whereas KRCB had transmitted primarily north of the Bay
12 Area. RCB and the District began discussing a potential sale of KCSM.

13 34. Meanwhile, public scrutiny intensified regarding the District's failure to place a
14 required bid to sell KCSM's spectrum rights in the Auction. At the District Board of Trustees'
15 March 22, 2017 meeting, the Board heard from members of the public who, in response to "press
16 reports regarding issues with KCSM-FM and the sale of KCSM-TV," demanded that "the public
17 is owed an explanation" and that "the public deserves clear accounting and transparency with
18 regard to KCSM."²¹

19 35. The District responded not with transparency, but by hiding information from the
20 public and acting in near-total secrecy to lock up its face-saving fire sale of KCSM to RCB.
21 Although obligated by California law and its own Board policy to conduct a "public bid process
22 or public auction only after appropriate public notice,"²² such a public process would have risked
23 interfering with or delaying the arranged sale to RCB. Thus, the District's June 13, 2017 RFP (i)
24 was not discussed or authorized at a public Board of Trustees meeting, (ii) was not posted on the
25 District's website (where current and archived proposals are otherwise posted), and (iii) was not
26

27 ²¹ Minutes of the Regular Meeting of the Board of Trustees of the San Mateo County Community
28 College District (Mar. 22, 2017), at 4.

²² San Mateo County Community College District, Board Policy No. 8.31 (BP 6550).

1 published online or in a newspaper that published it online. The District's RFP process was thus
2 far from "public"; rather, it was designed to ensure that RCB would have the highest bid.

3 36. A truly public, far-reaching process would have been particularly appropriate here
4 because of KCSM's unique position in the post-Auction market as the only Bay Area non-
5 commercial educational station that did not relinquish spectrum in the Auction. This rendered
6 KCSM potentially attractive to similar broadcasters not only in the Bay Area, such as RCB, but
7 also nationwide because of the unique opportunity to enter the desirable Bay Area market.

8 37. The Board of Trustees did not publicly address KCSM's future again until
9 September 2017. Consistent with the District's plan to dump KCSM quickly at the expense of
10 any meaningful public notice or a bona fide auction process, it quietly posted on September 5 an
11 agenda for a "special" Board of Trustees meeting the very next day to vote on the "Approval of
12 the Sale of KCSM-TV." With only a handful of people present, the Board quickly moved at the
13 September 6 meeting to allow Chancellor Ron Galatolo to finalize an agreement to sell KCSM.
14 After a District representative recited the material terms, not one Board member asked a single
15 question about the buyer, the sale process, the negotiations (or lack thereof), or the terms. Only
16 after a reporter's question did the District reluctantly identify the buyer, which was—not
17 surprisingly—RCB. With no debate, all Board members in attendance voted to allow Chancellor
18 Galatolo to finalize the sale agreement. The meeting lasted a total of eleven minutes.

19 38. On the very next day, September 7, RCB announced that it had already "purchased
20 and will operate KCSM TV."²³ The day after, September 8, the District—in another stealth, late-
21 in-the-day website post—stated that the Board would vote on September 13 to ratify the KCSM
22 sale agreement.²⁴ In other words, the District had already finalized the sale agreement that it only
23 disclosed to the public for the first time 48 hours earlier. The sale to RCB was a foregone
24 conclusion if ever there was one.

25 39. In the same September 8 post, the District publicly disclosed for the first time that
26 the KCSM sale was the product of months of previously unreported Board action behind closed

27 ²³ "KRCB North Bay Public Media Acquires KCSM TV," *available at* [https://www.krcb.org/
connect-to-krcb/krcb-north-bay-public-media-acquires-kcsm-tv](https://www.krcb.org/connect-to-krcb/krcb-north-bay-public-media-acquires-kcsm-tv) (last accessed Sept. 11, 2017).

28 ²⁴ Agenda, Regular Meeting of the Board of Trustees, Sept. 13, 2017, at 2.

1 doors. The District disclosed that the Board had authorized the RFP, although there is no online
2 record or discussion of that authorization. The District stated that it “gave required public notice
3 of the RFP,” although it gave no specifics about where the RFP was posted or published. And the
4 District stated that it notified a “number” of potential bidders, “including certain brokers and local
5 Bay Area stations,” although it did not identify who or how many (or whether any are outside the
6 Bay Area).²⁵

7 40. The District further disclosed that the Board had created an “RFP
8 subcommittee”—again outside public view—to “negotiate” with RCB. The results were
9 predictable: RCB, in discussions with the District since February 2017, did not increase its cash
10 offer. Instead, the District negotiated and accepted nonmonetary terms, such as monthly 30-
11 second announcements and 30-minute installments of District-produced programming, in lieu of
12 cash, demonstrating that the District never intended to maximize KCSM’s sale price.

13 **The District Withholds Requested Public Records About the Arranged Sale to RCB While**
14 **the Board Votes to Ratify the Sale**

15 41. On September 11, 2017, the next business day after the District scheduled the
16 ratification vote, LPN requested under the California Public Records Act²⁶ the information and
17 documents about the KCSM sale that the District appeared intent on concealing. LPN requested
18 documents relating to, among other things, (i) the Board’s authorization to issue the RFP; (ii) the
19 “required public notice” that the District represented it published; (iii) the brokers and local Bay
20 Area stations that the District represented it contacted; (iv) the Board’s creation of the RFP
21 subcommittee; and (v) the District’s communications with RCB about the sale. LPN notified the
22 District that California Supreme Court caselaw applying the Public Records Act required the
23 District to produce the requested documents before the Board of Trustees ratified the KCSM sale
24 agreement.²⁷ Because of the public’s “legitimate and substantial interest in scrutinizing the
25 process leading to the selection of the winning proposal,” the Supreme Court requires that related
26 public records must be produced to ensure that “a reasonable time remains for public input before

27 ²⁵ Board Report No. 17-9-104B at 1.

28 ²⁶ Cal. Gov’t Code §§ 6250 *et seq.*

²⁷ See *Michaelis, Montanari & Johnson v. Superior Court*, 38 Cal. 4th 1065, 1073–74 (2006).

1 the Board's final award is made," to "give the public and all interested parties ample opportunity
2 to scrutinize and protest the proposed award."²⁸ The law thus presented the District with a
3 choice—produce the requested public records before the scheduled vote to ratify the KCSM sale
4 agreement, or adjourn that vote until after producing the requested public records.

5 42. The District chose instead to ignore LPN's request until after it had voted to ratify
6 the KCSM sale agreement, violating the Public Records Act. It crafted a plan to ratify the
7 agreement not at the September 13, 2017 regular meeting, as it had originally noticed before
8 LPN's request, but at a later "special" meeting. At the September 13 meeting, Board president
9 Thomas Mohr only read a carefully drafted script repeating the District's conclusory assertions
10 that it followed the law and published notice of the RFP.²⁹ Mohr and the Board continued to
11 conceal the basic information that LPN had requested, such as details of the RFP's newspaper and
12 online publication, all but confirming that the District's "public" process was intended to hide
13 from competition a backroom deal that the District and RCB had already cut. Despite promising
14 time for "public comments and questions" after Mohr's speech, the Board instead quickly voted
15 to table the KCSM deliberation for a week "in the interest of time."³⁰ It then moved on to other
16 business. The District refused to answer a reporter's later question why the Board had tabled the
17 ratification vote.³¹

18 **The Board Votes to Ratify the KCSM Sale Agreement in a Special Meeting Held Before the**
19 **Publicly Noticed Time**

20 43. The Board tabled the September 13 ratification vote because it hoped to get away
21 with a later vote at a September 20 special meeting that violated both the letter and certainly the
22 spirit of the Brown Act, California's open-meeting law. The Brown Act requires local agencies
23

24
25 ²⁸ *Id.* at 1073–74.

26 ²⁹ Minutes of the Regular Meeting of the Board of Trustees (Sept. 13, 2017), at 4–6.

27 ³⁰ Minutes of the Regular Meeting of the Board of Trustees (Sept. 13, 2017), at 6.

28 ³¹ *Community College Officials Seal KCSM Deal*, San Mateo Daily Journal (Sept. 22, 2017),
available at http://www.smdailyjournal.com/news/local/community-college-officials-seal-kcsm-deal/article_c2cb2e3c-9f51-11e7-8bdf-cf3255258dc8.html (reporting that District spokesman "declined to offer reasoning for the college board postponing a decision on the sale last week").

1 to post a notice of any special meeting “on the local agency’s Internet Web site” that must, among
2 other things, “specify the time and place of the special meeting.”³²

3 44. The District first posted the September 20 special meeting agenda on its website
4 late on Friday, September 15, 2017. It reflected that the meeting would be called to order at 6:00
5 p.m., followed by “consideration” of a single item, “Ratification of the Sale Agreement for the
6 Purchase of KCSM-TV.”³³ The web page containing the link to that agenda identified the posting
7 date: “Modified on 15th September, 2017.”³⁴

8 45. On the day before the special meeting, the District quietly rescheduled it to occur
9 earlier. Tucked into the middle of the seven-line heading at the top of the agenda, the District
10 changed “6:00 p.m.” to “5:00 p.m.”³⁵ But it did not change the agenda itself, which continued to
11 state (in bold) that the “Call to Order/Roll Call” would occur at “6:00 p.m.,” followed by the
12 “consideration” of the KCSM sale.³⁶ Nor did the District update the modification date next to the
13 agenda link on its website, which continued to read, falsely, “Modified on” “15th September,
14 2017.”³⁷ Thus, anyone who had viewed the agenda would have had no reason to suspect, let
15 alone view, the “modified” agenda because the District gave no indication that it had been
16 modified—indeed, the website misleadingly indicated that it had not. And even if those
17 constituents (or anyone else) had viewed the revised agenda, they would have observed that the
18 call to order and KCSM sale discussion were still scheduled for 6:00.

19 46. The District’s trick worked. The Board convened the September 20 special
20 meeting in a near-empty room, in stark contrast to the dozens in attendance a week earlier, when
21

22 ³² Cal. Gov’t Code § 54956(a).

23 ³³ Agenda, San Mateo County Community College District, Special Meeting of the Board of
24 Trustees (downloaded from the District’s website on Sunday, September 17, 2017) (attached as
25 Exhibit F).

26 ³⁴ Exhibit G (September 20 screenshot of the District’s website showing that after the meeting,
27 the District’s website still falsely asserted that the agenda was last “modified on” “15th
28 September, 2017”).

³⁵ Agenda, San Mateo County Community College District, Special Meeting of the Board of
Trustees (downloaded from the District’s website on September 20, 2017) (attached as Exhibit
H).

³⁶ Ex. H.

³⁷ Ex. G.

1 the Board tabled deliberation on the KCSM sale. Once again with no discussion, comments, or
2 questions from a single Board member (or anyone else), the Board voted to ratify the KCSM sale
3 agreement. The entire meeting lasted four minutes.

4 47. The next day, September 21, the District acknowledged LPN's Public Records Act
5 request for the first time. The District admitted that it has responsive documents but would not
6 produce them until "approximately the end of November 2017"—long after the Board vote to
7 ratify the KCSM sale. To this day, the District has not produced any of the responsive documents
8 it committed in its letter to produce, such as documents responsive to LPN's requests about (i) the
9 Board's authorization to issue the RFP; (ii) the "required public notice" that the District
10 represented it published; (iii) the brokers and local Bay Area stations that the District represented
11 it contacted; (iv) the Board's creation of the RFP subcommittee; (v) communications between or
12 among the RFP subcommittee and Chancellor Galatolo about the sale; (vi) the District's
13 communications with RCB about the sale; or (vii) the District's stated attempts to negotiate a
14 higher cash payment for KCSM.

15 48. On September 25, 2017, LPN called out the District's behavior as a violation of
16 the Brown Act's basic and straightforward requirement that local agencies conduct their business
17 at the announced time. Caught red-handed, the District was forced to state on October 6, 2017,
18 that it would rescind its September 20 ratification of the KCSM sale agreement. Neither the
19 proposed board resolution nor the accompanying board report answered other questions about the
20 Board's conduct, such as why it moved up the meeting from 6:00 to 5:00 on short notice and why
21 its website falsely indicated that the agenda and board packet had not been revised since the
22 original posting on "15th September, 2017." The Board quickly voted—again with no comments,
23 questions, or additional information from any Board members—to ratify the KCSM sale
24 agreement at its October 11, 2017 meeting.

25
26 **The KCSM Sale Agreement's Plain Language Demonstrates That RCB Knew the**
27 **Agreement Interferes with LPN's Contractual Rights**

28

1 49. The District's accomplice, RCB, well knew of LPN's rights concerning the KCSM
2 sale and RCB's potential liability—for which the District agreed to protect it. The District posted
3 on September 15, 2017, an undated "Execution Version" of the KCSM sale agreement,³⁸ which
4 was later signed and dated September 22, 2017.³⁹ Schedule 2.10 to the agreement, titled "Seller
5 Litigation," disclosed to RCB the Auction Litigation and the existence of the LPN Contracts,
6 which had been publicly available since LPN filed the Auction Litigation on April 10, 2017.
7 Schedule 2.10 also disclosed to RCB LPN's assertion that the LPN Contracts entitled LPN "to
8 block the sale of Station at this time."⁴⁰

9 50. With knowledge of LPN's rights and RCB's potential liability, RCB nevertheless
10 chose to continue with the purchase. It accepted the risks and liability if LPN were to enforce its
11 rights because RCB got the District to protect and indemnify it: (i) RCB could terminate the
12 KCSM sale agreement if LPN were to obtain an order enjoining the sale or if RCB were "made a
13 party to any legal or equitable action by LPN"⁴¹; (ii) RCB would receive a credit against the
14 KCSM purchase price in the amount of its "legal costs and other related expenses in connection
15 with" such litigation⁴²; and (iii) the District would indemnify RCB against "any and all losses"
16 resulting from "any third party claim" resulting from the "business or operation of the Station"
17 before closing,⁴³ such as LPN's claims arising from the LPN Contracts. RCB is thus free to
18 interfere with LPN's contractual rights with impunity.

19 **FIRST CAUSE OF ACTION**

20 **Breach of Contract Against the District**

21 51. LPN hereby incorporates the preceding paragraphs 1 through 50 of this Complaint
22 by reference as if set forth here again in full.

23 52. The Funding Agreement and Put/Call Option Agreement are valid and enforceable
24 contracts between the District and LPN.

25 ³⁸ Asset Purchase Agreement (attached as Exhibit I).

26 ³⁹ Exhibit J.

27 ⁴⁰ Ex. I & J at Schedule 2.10.

27 ⁴¹ Ex. I & J § 10.6(b)–(c).

28 ⁴² Ex. I & J § 10.6(d).

⁴³ Ex. I & J § 9.2(a)(iv)–(v).

1 53. LPN has fully performed its duties under the Funding Agreement and Put/Call
2 Option Agreement.

3 54. Put/Call Option Agreement § 10.c.ii. requires the District to “operate the Station,
4 and perform all of its obligations with respect thereto, in the ordinary course of business
5 consistent with past practices” until “the earlier to occur of an Auction Sale, Call Option Sale, or
6 Put Option Sale.”

7 55. By agreeing to sell KCSM to RCB, the District has breached its obligation to
8 “operate the Station . . . in the ordinary course of business consistent with past practices.” And no
9 “Auction Sale, Call Option Sale, or Put Option Sale” has occurred: (i) no Auction Sale occurred
10 because KCSM was dropped from the Auction due to the District’s failure to enter a bid on
11 November 15, 2016; (ii) no Call Option Sale has occurred because LPN has not exercised its
12 “Sale Call Option” “to cause [the District] to participate in a Sale” under Put/Call Option
13 Agreement § 3.a.; and (iii) no Put Option Sale has occurred because the District cannot exercise
14 its Put Option under Put/Call Option Agreement § 4.c. due to its material breaches of the LPN
15 Contracts, as well as the occurrence of a “Triggering Event” under the Funding Agreement, as
16 described above and in the Auction Litigation.

17 56. Similarly, Funding Agreement § 6.8 requires the District, “[f]rom and after” May
18 16, 2013, to “continue to operate the Station in substantially the same manner as operated prior
19 to” May 16, 2013. Under Funding Agreement § 6, this obligation lasts “until the earlier of (i) the
20 payment in full of all of the Reimbursement Obligations” (defined as “all obligations of every
21 nature of [the District] from time to time owed to LPN under the Funding Documents”) “and (ii)
22 the consummation of any Auction Sale, Call Option Sale or Put Option Sale.”

23 57. By agreeing to sell KCSM to RCB, the District has breached its obligation to
24 “continue to operate the Station in substantially the same manner as operated prior to” May 16,
25 2013. This obligation remains in effect because (i) no “Auction Sale, Call Option Sale, or Put
26 Option Sale” has been or can be consummated, as described in paragraph 55; and (ii) the District
27 has not paid any of its Reimbursement Obligations, including but not limited to the LPN Share
28 defined in Put/Call Option Agreement § 1.

1 58. Put/Call Option Agreement § 10.c.iii. obligates the District “not [to] solicit, initiate
2 or hold discussions with any other party . . . with respect to any sale of the Station, except as
3 permitted in” the LPN Contracts, until “the earlier to occur of an Auction Sale, Call Option Sale,
4 or Put Option Sale.”

5 59. By discussing and agreeing to the sale of KCSM to RCB, the District has breached
6 its obligation under Put/Call Option Agreement § 10.c.iii. And no “Auction Sale, Call Option
7 Sale, or Put Option Sale” has occurred, as described in paragraph 55.

8 60. Funding Agreement § 7.3 obligates the District “not [to] convey, sell . . . or
9 otherwise dispose of, in one transaction or a series of transactions, substantially all of its business,
10 property or assets . . . used in connection with the operation of the Station . . . other than in
11 connection with the transactions contemplated by the Option Agreement”—i.e., the Auction Sale,
12 Call Option Sale, or Put Option Sale. Under Funding Agreement § 7, this obligation lasts “until
13 the earlier of (i) the payment in full of all of the Reimbursement Obligations . . . and (ii) the
14 consummation of any Auction Sale, Call Option Sale or Put Option Sale.”

15 61. By agreeing to sell KCSM to RCB, the District has breached its Funding
16 Agreement § 7.3 obligation not to “sell . . . substantially all of its business, property or assets . . .
17 used in connection with the operation of the Station.” This obligation remains in effect because
18 (i) no “Auction Sale, Call Option Sale, or Put Option Sale” has been or can be consummated, as
19 described in paragraph 55; and (ii) the District has not paid any of its Reimbursement
20 Obligations, including but not limited to the LPN Share defined in Put/Call Option Agreement §
21 1.

22 62. The Put/Call Option Agreement entitles LPN to specific performance to remedy
23 the District’s breaches of Put/Call Option Agreement §§ 10.c.ii. & 10.c.iii. and Funding
24 Agreement §§ 6.8 & 7.3 (which Put/Call Option Agreement § 10.a. incorporates “as if the same
25 were set forth fully herein”). “[I]n the event of a material breach” of the Put/Call Option
26 Agreement, the parties agreed that (i) “money damages alone will be inadequate to compensate
27 the damaged party,” and (ii) “the non-breaching party shall be entitled, in lieu of terminating this
28 Agreement, to specific performance of its terms.” (Put/Call Option Agreement § 11.) The parties

1 contemplated that proceeds of a sale of KCSM would be inadequate unless KCSM were sold
2 through one of three potential sale structures to which the parties expressly agreed—an Auction
3 Sale, Put Option Sale, or Call Option Sale—to fully capture KCSM’s value as a unique asset.
4 Furthermore, the District waived its defense of an adequate monetary remedy: “If any action is
5 brought by one party against the other to enforce this Agreement, the other party shall waive the
6 defense that there is an adequate remedy at law.”

7 63. LPN is therefore entitled, as a result of the District’s wrongful acts described in
8 this Complaint, to the District’s specific performance of its covenants in Put/Call Option
9 Agreement §§ 10.c.ii. & 10.c.iii. and Funding Agreement §§ 6.8 & 7.3, including its covenant not
10 to “sell . . . substantially all of its business, property or assets . . . used in connection with the
11 operation of the Station.”

12 64. If, in the alternative, the District’s sale of KCSM to RCB were deemed a Put
13 Option Sale under the Put/Call Option Agreement, then LPN would be entitled to the LPN Share,
14 or 36.5%, of the sale proceeds: “LPN will be entitled to receive the LPN Share of the proceeds
15 derived from a Put Option Sale upon the consummation of such a transaction.” (Put/Call Option
16 Agreement § 4.a.) The precise amount of such damages will be proven at trial.

17 **SECOND CAUSE OF ACTION**

18 **Breach of Implied Covenant of Good Faith and Fair Dealing Against the District**

19 65. LPN hereby incorporates the preceding paragraphs 1 through 64 of this Complaint
20 by reference as if set forth here again in full.

21 66. The Funding Agreement and Put/Call Option Agreement are valid and enforceable
22 contracts between the District and LPN.

23 67. Implied in the Funding Agreement and Put/Call Option Agreement are covenants
24 of good faith and fair dealing that prohibit the District from taking actions to prevent LPN from
25 realizing the benefits of the Funding Agreement and Put/Call Option Agreement.

26 68. The Funding Agreement and Put/Call Option Agreement prohibit the District from
27 selling KCSM except in an Auction Sale, Call Option Sale, or Put Option Sale. In each of those
28

1 Sales, the Put/Call Option Agreement entitles LPN to the LPN Share, or 36.5%, of the sale
2 proceeds.

3 69. After the District's actions prevented an Auction Sale from occurring (as described
4 above and in the Auction Litigation), the District has further acted in bad faith to frustrate LPN's
5 right to receive the benefits of the Put/Call Option Agreement—namely, (i) specific performance
6 of the District's covenants to continue operating KCSM and not to sell KCSM except in an
7 Auction Sale, Call Option Sale, or Put Option Sale; or (ii) in the alternative, the LPN Share of the
8 proceeds from the sale of KCSM in either a Call Option Sale or Put Option Sale. The District,
9 among other things, (i) began discussions with RCB about a potential sale of KCSM immediately
10 after the Quiet Period ended in February 2017; (ii) entered an agreement to sell KCSM in a
11 transaction that is neither a Call Option Sale nor a Put Option Sale and provides for no payment
12 of any kind to LPN; (iii) agreed to indemnify or credit RCB in the amount of any liability to LPN
13 (and related legal fees) arising from interfering with the LPN Contracts; (iv) denied LPN the
14 District's public records about the sale in violation of the California Public Records Act; and (v)
15 tried to secure the Board of Trustees' ratification of the KCSM sale agreement in violation of the
16 Brown Act.

17 70. LPN has fully performed its duties under the Funding Agreement and Put/Call
18 Option Agreement.

19 71. As a direct and proximate result of the District's breach of the implied covenant of
20 good faith and fair dealing, LPN has been harmed and continues to suffer harm. Because the
21 District agreed that "money damages alone will be inadequate to compensate the damaged party"
22 for losing the benefits of the Put/Call Option Agreement, LPN is entitled to the District's specific
23 performance of its covenants in Put/Call Option Agreement §§ 10.c.ii. & 10.c.iii. and Funding
24 Agreement §§ 6.8 & 7.3. If, in the alternative, the District's sale of KCSM to RCB were deemed
25 a Put Option Sale under the Put/Call Option Agreement, then LPN would be entitled to the LPN
26 Share, or 36.5%, of the sale proceeds.

27
28

1 **THIRD CAUSE OF ACTION**

2 **Violation of the California Public Records Act, Cal. Gov't Code § 6250 *et seq.*, Against the**
3 **District**

4 72. LPN hereby incorporates the preceding paragraphs 1 through 71 of this Complaint
5 by reference as if set forth here again in full.

6 73. LPN requested on September 11, 2017, certain categories of the District's public
7 records relating to the proposed sale of KCSM to RCB.

8 74. The District responded on September 21, 2017, that it (i) "has documents
9 responsive to [LPN's] request"; and (ii) "will produce any and all non-privileged responsive
10 documents as soon as we are reasonably able to do so, which we believe will be approximately
11 the end of November 2017."

12 75. The District's Board of Trustees ratified the KCSM sale agreement with RCB on
13 October 11, 2017, before the District had produced the requested public records as it agreed in its
14 September 21, 2017 letter. The District still has not produced those records.

15 76. LPN is therefore entitled under Cal. Gov. Code § 6258 to a declaration that the
16 District has violated the California Public Records Act by failing under Cal. Gov. Code § 6253
17 and the California Supreme Court's decision in *Michaelis, Montanari & Johnson v. Superior*
18 *Court*, 38 Cal. 4th 1065, 1073-74 (2006), to make the requested public records promptly
19 available to LPN before the District's Board of Trustees ratified the KCSM sale agreement with
20 RCB.

21 77. LPN requests an order under Cal. Gov. Code § 6259(a) directing the District to
22 produce to LPN all public records identified in LPN's September 11, 2017 request, which the
23 District improperly withheld until the Board of Trustees ratified the KCSM sale agreement, and
24 continues to improperly withhold.

25 **FOURTH CAUSE OF ACTION**

26 **Intentional Interference with Contractual Relations Against RCB**

27 78. LPN hereby incorporates the preceding paragraphs 1 through 77 of this Complaint
28 by reference as if set forth here again in full.

1 79. The Funding Agreement and Put/Call Option Agreement are valid and enforceable
2 contracts between the District and LPN.

3 80. RCB knows of these contracts. Schedule 2.10 to the KCSM sale agreement, titled
4 "Seller Litigation," disclosed to RCB the Auction Litigation and the existence of the LPN
5 Contracts, which are publicly available. Schedule 2.10 also disclosed to RCB LPN's assertion
6 that the LPN Contracts entitled LPN "to block the sale of Station at this time."⁴⁴

7 81. RCB's intentional acts were designed to induce the District's breach of the
8 Funding Agreement and Put/Call Option Agreement. As described above, RCB (i) contacted the
9 District in February 2017 to discuss selling KCSM; (ii) made an offer to purchase KCSM; (iii)
10 negotiated and executed the KCSM sale agreement with knowledge that the LPN Contracts did
11 not allow the District to enter it; and (iv) requested and obtained termination rights and
12 indemnification or credit from the District in the amount of RCB's liability to LPN (and related
13 legal fees) arising from interfering with the LPN Contracts.

14 82. As described above, the District has actually breached the Funding Agreement and
15 Put/Call Option Agreement by ratifying the KCSM sale agreement.

16 83. As a direct and proximate result of RCB's actions, LPN has suffered harm as
17 described above.

18 **FIFTH CAUSE OF ACTION**

19 **Violation of the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.*, Against**
20 **RCB**

21 84. LPN hereby incorporates the preceding paragraphs 1 through 83 of this Complaint
22 by reference as if set forth here again in full.

23 85. RCB committed an unlawful act because it intentionally interfered with the
24 Funding Agreement and Put/Call Option Agreement in discussing, negotiating, and entering into
25 a business transaction with the District to purchase KCSM, as described above. At a minimum,
26 RCB's actions were immoral, unethical, oppressive, or unscrupulous, and therefore an unfair
27 business practice.

28 _____
⁴⁴ Ex. I at Schedule 2.10.

1 93. This action arises out of the Funding Agreement. Thus, the prevailing party is
2 entitled to recover its reasonable attorneys' fees and expenses incurred in bringing this action and
3 enforcing any judgment.

4 94. The California Public Records Act, Cal. Gov. Code § 6259(d), entitles the
5 prevailing party to its reasonable attorneys' fees and court costs: "The court shall award court
6 costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed
7 pursuant to this section."

8 95. This action is filed pursuant to Cal. Gov. Code §§ 6258 & 6259. Thus, LPN is
9 entitled to recover its court costs and reasonable attorneys' fees incurred in bringing its claim
10 under Cal. Gov. Code §§ 6258 & 6259.

11 **PRESENTATION OF CLAIMS**

12 96. LPN presented its claims to the District in compliance with Cal. Gov. Code § 910
13 on February 21, 2017 (the Auction Litigation) and on August 10, 2017 (claims relating to the
14 KCSM sale agreement).

15 97. Specifically, the Auction Litigation claims were delivered by hand and sent by
16 certified mail from San Francisco, California, to the District's Chancellor's Office and the
17 District's Board of Trustees on February 21, 2017. On the same date, the claims were sent by e-
18 mail to Chancellor Galatolo, Mr. Eugene Whitlock, and the members of the District Board of
19 Trustees. On April 9, 2017, the District's counsel requested that LPN send all future
20 communications to counsel. LPN therefore sent its August 10, 2017 letter notifying the District
21 of claims relating to the proposed sale of KCSM directly to the District's counsel.

22 98. The District did not provide a notice of insufficiency under Cal. Gov. Code
23 § 910.8 within 20 days of either the February 21, 2017 letter or August 10, 2017 letter.

24 99. The District did not respond to LPN's claims by September 25, 2017. On the
25 contrary, the District Board of Trustees ratified the KCSM sale agreement on October 11, 2017.
26 The District's Board has therefore rejected LPN's claims under Cal. Gov. Code § 912.4(c).

27 **PRAYER FOR RELIEF**

28 LPN prays for judgment against the District and RCB, as follows:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- a. Ordering the District’s specific performance of the Put/Call Option Agreement, or, in the alternative, if the sale of KCSM under the KCSM sale agreement were deemed a Put Option Sale under the Put/Call Option Agreement, awarding LPN damages in an amount to be proven at trial, but in no event less than the minimum jurisdictional amount;
- b. For a preliminary injunction during the pendency of this Action to restrain and enjoin the District from breaching its covenants in Put/Call Option Agreement §§ 10.c.ii. & 10.c.iii. and Funding Agreement §§ 6.8 & 7.3 by completing the sale of KCSM under the KCSM sale agreement;
- c. For a declaration under Cal. Gov. Code § 6258 that the District has violated the California Public Records Act;
- d. For an order under Cal. Gov. Code § 6259(a) directing the District to produce to LPN all public records identified in LPN’s September 11, 2017 request;
- e. For compensatory damages against RCB in a sum to be determined at trial;
- f. For a permanent injunction under Cal. Bus. & Prof. Code § 17203 to restrain and enjoin RCB from continuing the unlawful and unfair business transaction described above;
- g. For a preliminary injunction during the pendency of this action under Cal. Bus. & Prof. Code § 17203 to restrain and enjoin RCB from continuing the unlawful and unfair business transaction described above;
- h. Directing the District to pay LPN’s attorneys’ fees and costs incurred in enforcing its rights and bringing its claims under the Put/Call Option Agreement and Funding Agreement, in an amount to be determined upon an offer of proof to the Court, and granting LPN leave of the Court to offer a report constituting such proof to the Court;
- i. Directing the District to pay LPN’s attorneys’ fees and court costs incurred in bringing its claim under the California Public Records Act, Cal. Gov. Code § 6259(d), in an amount to be determined upon an offer of proof to the Court, and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

granting LPN leave of the Court to offer a report constituting such proof to the Court;

- j. For prejudgment interest; and
- k. For such other and further relief as the court may deem proper.

DATED: October 23, 2017

Mark E. Berghausen (S.B. #278968)
B. Andrew Bednark (*pro hac vice* forthcoming)
O'MELVENY & MYERS LLP



Mark E. Berghausen
B. Andrew Bednark

Attorneys for LocusPoint Networks, LLC and
LocusPoint II KCSM, LLC

VERIFICATION

I, William D. deKay, declare:

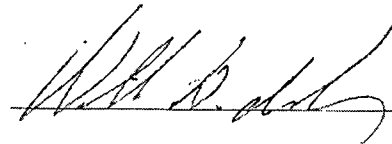
1. I am a principal of LocusPoint Networks, LLC and LocusPoint II KCSM, LLC and am authorized to make this verification on their behalf.

2. I have read the above complaint and know its contents.

3. The matters stated in the complaint in Paragraphs 2, 8, 13-14, 22, 24-29, 41, 47, 51-68, 70-74, 76-79, and 82-99 are true of my own knowledge, and I am informed and believe that the remaining statements are true upon that information and belief.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed on October 23, 2017, at Pleasanton, California.



WILLIAM D. DEKAY

EXHIBIT A



O'MELVENY & MYERS LLP

BEIJING
BRUSSELS
CENTURY CITY
HONG KONG
LONDON
LOS ANGELES
NEWPORT BEACH

Times Square Tower
7 Times Square
New York, New York 10036-6524

TELEPHONE (212) 326-2000
FACSIMILE (212) 326-2061
www.omm.com

SAN FRANCISCO
SEOUL
SHANGHAI
SILICON VALLEY
SINGAPORE
TOKYO
WASHINGTON, D.C.

February 21, 2017

WRITER'S DIRECT DIAL
(212) 326-2289

U.S. MAIL AND PERSONAL DELIVERY

WRITER'S E-MAIL ADDRESS
abednark@omm.com

Board of Trustees
San Mateo County Community College District
3401 CSM Drive
San Mateo, California 94402-3651

Office of Chancellor Ron Galatolo
San Mateo County Community College District
3401 CSM Drive
San Mateo, California 94402-3651

Dear Chancellor Galatolo and the Board of Trustees:

We represent LocusPoint Networks, LLC and LocusPoint II KCSM, LLC ("LPN"). LPN hereby asserts claims against the San Mateo County Community College District ("the District") for money and damages arising from the District's breaches of its May 16, 2013 contracts with LPN regarding the Federal Communications Commission's ("FCC's") 2016 broadcast incentive auction. Those contracts obligated the District to, among other things, take all necessary actions to successfully participate in the "reverse auction" component of the incentive auction ("the Auction") and to relinquish the spectrum usage rights associated with its station, KCSM-TV,¹ so long as the price offered by the FCC was above an agreed minimum. In the months leading up to the Auction, the District and LPN established procedures that the District would follow to ensure KCSM's successful participation in the Auction, including confirming and documenting each of the District's bids as they were submitted in light of the FCC's repeated warnings that failure to submit a bid would result in withdrawal from the Auction. Disregarding these procedures, the District failed in its most fundamental obligation under the contracts—placing a bid. On November 15, 2016, the District—by its own admission—failed to submit a bid in Stage 3, Round 23 of the Auction when the FCC offer was \$114,494,613, well above the minimum price on which the District and LPN had agreed. As a direct and immediate result, the FCC, in accordance with its well-publicized procedures, dropped KCSM from the entire Auction, rendering KCSM unable to sell its spectrum usage rights for a "Go Off-Air" option, as other full-

¹ The District operates the full-power noncommercial education television station KCSM-TV (RF Channel 43), San Mateo, California (FCC Facility ID No. 58912) and holds all FCC licenses and authorizations necessary for the current operations of KCSM-TV.

power stations in the same television market had done for bids in excess of \$80 million for full relinquishment. The District's breaches deprived LPN of the 36.5% of the Auction proceeds to which it would have been entitled but for the District's breaches of its obligations to bid in the Auction.

This letter will serve as the notice required under California Government Code Section ("§") 945.4, which specifies that such notice be provided as a prerequisite to an action for damages against the District. We have addressed each of the requirements of § 910 in this letter.

CIRCUMSTANCES OF LPN'S CLAIM

The District Selects LocusPoint as a Partner

The District solicited parties to acquire or fund KCSM beginning in 2011. On December 7, 2011, it issued an RFP to "qualified entities" to acquire KCSM. According to Board of Trustees meeting minutes, a team consisting of Jan Roecks, Eugene Whitlock, Marilyn Lawrence, and outside counsel Lawrence Miller was formed to direct the RFP process. On February 14, 2012, the District reported that it had received bids from six entities including LPN. But on October 24, 2012, the Board decided not to pursue the sale.

Rather, as the November 14, 2012 Board meeting minutes reflect, Jan Roecks proposed a new plan under which the District would either sell KCSM or partner with a third-party to sell KCSM's spectrum usage rights in the upcoming reverse auction that the FCC had announced for the purpose of transferring spectrum from broadcast use to wireless use. The May 15, 2013 Board minutes report that the District received four bids, and Ms. Roecks recommended the proposal from LocusPoint Networks as "the best and most valuable option for the District." The Board accepted that recommendation.

LPN Agrees to Fund KCSM in Exchange for a Share of the Auction Proceeds

LPN and the District signed a binding Letter of Intent on March 19, 2013, that documented the District's "interest in obtaining support in funding [KCSM's] operating expenses." LPN stated that it will agree to provide that funding in the amount of \$3.6 million. In exchange, the District stated that it will agree to pay LPN 36.5% of the "proceeds derived from the District's participation in the Auction." The District represented that it "will agree to participate in the Auction and to place bids under which it would relinquish to the FCC [KCSM's] spectrum usage rights."

The District and LPN formalized this arrangement in three agreements executed on May 16, 2013: (1) a Funding Agreement (amended December 17, 2015); (2) a Put/Call Option Agreement (amended December 17, 2015); and (3) a Bid Management Agreement (amended December 8, 2015). On behalf of the District, Deputy Chancellor James W. Keller signed the May 16, 2013 agreements, and Executive Vice Chancellor Kathy Blackwood signed the December 8 and 17, 2015 amendments.

In these contracts, LPN agreed to subsidize the District's operation of KCSM in the amount of \$3.6 million in quarterly installments of \$225,000. In consideration, the District agreed, among other things, to (1) participate in the Auction, (2) designate "up to three individuals who shall serve as the District's authorized bidders during the Auction" and who are "authorized to place bids on behalf of the District during the Auction"; (3) "take all actions necessary to cause the spectrum usage rights associated with [KCSM's] FCC License to be relinquished in the Auction"; (4) "[t]ake all such other actions as may be reasonably required or as LPN . . . may request in order for the District to successfully participate in the Auction and relinquish the spectrum usage rights associated with the License at a price that is at or above the Minimum Bid Amount"; (5) give LPN the option to receive 36.5% of the District's proceeds from the Auction; (6) "take no action that could reasonably be expected to impede, interfere with, delay, postpone, or materially adversely affect" LPN's option; and (7) certify before receiving each quarterly payment from LPN that the District had, among other things, "performed in all material respects" its obligations under the three agreements. While LPN also has the option "to cause [the District] to participate in a Sale" of KCSM (and the District had an option "to participate in a Sale" provided that, among other things, it did not breach the agreements), neither party expected a sale of KCSM, a noncommercial educational station, to yield any amount close to the Auction proceeds, as demonstrated by the District's rejection of prior acquisition bids in favor of participating in the Auction.

The Funding Agreement also gave LPN the right to declare its prior quarterly payments to the District "immediately due and payable" upon "the occurrence and during the continuation of" certain "Triggering Events," including the District's "default in the performance of or compliance with" the obligations described above. The District agreed that in the event of its willful breach, it would return LPN's payments with interest at 8% annually. And in the event of litigation arising out of the Funding Agreement, "the losing party shall pay to the prevailing party reasonable attorneys' fees and costs incurred in bringing such suit."

At bottom, LPN (i) contributed the subsidy payments in exchange for a percentage of the Auction proceeds, and (ii) accepted the risk—at a time when the Auction's timing, design, and bidding process were all unknown—that the FCC would not meet the parties' agreed minimum reserve price. The District, by contrast, had only the responsibility to participate in the Auction, designate bidders, and place bids. Indeed, under FCC regulations, nobody other than the District's authorized bidders could place bids for KCSM.

The FCC Adopts Rules for the Auction and Publishes Procedures to Simplify Participation in the Auction

Throughout its development of bidding procedures for the Auction, the FCC sought to facilitate broadcaster participation by enabling bidders to make a series of simple decisions, rather than requiring a more complicated bidding strategy. The auction format adopted by the FCC called on bidders only to make the simple choice of whether to accept the current prices offered by the FCC. The FCC published the order establishing the Auction design framework, and later published a detailed notice explaining all bidding procedures. To ensure that

broadcasters were fully informed about the opportunity presented by the Auction, the FCC also conducted numerous educational efforts (such as outreach meetings, webinars, and tutorials) and published a "user guide" specifically for TV stations participating in the Auction.

The FCC's rules for the auction included back-up mechanisms to enable bidders to deal with contingencies. While only "authorized bidders" were allowed to enter bids, the FCC instructed that applicants could identify up to three "authorized bidders who are authorized to place bids for the applicant in the auction." And to ensure against technical problems preventing bidders from entering bids, the FCC's auction system—which is primarily computer-based— included a telephonic back-up bidding system that a bidder could have used in case of computer failure.

The District and LPN Prepare for the Auction to Ensure the District's Successful Participation

The District filed an application with the FCC to participate in the Auction, which Jan Roecks signed on the District's behalf. The District designated its employees Jan Roecks, Eugene Whitlock, and Kathy Blackwood as its authorized bidders. Under FCC instructions, only those authorized bidders were eligible to receive and use an electronic code key ("SecurID tokens") from the FCC allowing them to "place bids for the applicant during the auction."

Participation in the Auction would, among other things, entail placing bids in what was expected to be multiple stages each containing dozens of bidding rounds over several months. At each stage of the Auction, participants such as the District would be called upon to submit bids using the SecurID tokens. The FCC would determine which bids would become "provisionally winning" bids based on the extent of spectrum usage rights that it needed to purchase to feasibly reorganize television stations into a smaller TV band. Once the set of provisionally winning bids for an auction stage was determined, wireless providers would then bid for the purchased spectrum in a "forward auction" stage. If the wireless providers' bids were insufficient to satisfy the government's purchase obligations, the FCC would conduct a subsequent stage of both the reverse and forward auctions. Once the forward auction hit specific price benchmarks determined by the FCC, the incentive auction would proceed to its conclusion.

The District's three authorized bidders met with an LPN representative in December 2015 to begin preparing for the Auction. Joining them at this meeting were representatives from PricewaterhouseCoopers LLP ("PwC"). LPN had engaged PwC at its expense to consult with the District to comply with FCC's Prohibited Communications Rule, scheduled to take effect in January 2016, which would prohibit direct communications between the District and LPN during the Quiet Period about the District's (or any other television licensee's) bids or bidding strategy during the Auction. LPN representative Bill deKay also attended a meeting in December 2015 to discuss the Auction with Chancellor Galatolo, Jan Roecks, and Eugene Whitlock. The District agreed to "consult in every round during the Auction with PwC" but acknowledged that PwC was "not assuming any additional duties or obligations directly to the District."

In addition to the above meetings, PwC worked closely with the District to ensure close coordination throughout the Auction. PwC assisted the District in participating in the FCC's mock auction (held prior to the start of bidding), and developed and refined agreed-upon bidding procedures.

The District, LPN, and PwC agreed to implement several procedural safeguards to ensure that the District properly submitted bids in each Auction round. These safeguards were critical because the consequences of not submitting a bid were enormous—as the FCC repeatedly warned, a missing bid would be deemed a bid to drop out of the Auction, precluding any future bidding in any future stage or round. The User Guide to the FCC Reverse Auction Bidding System, which was supplied to each bidding entity, contains at least three separate warnings that a failure to bid will be interpreted as a bid for the station to drop out of the Auction. And FCC Mock Auction documents and other education materials all caution that missing bids will result in being dropped from the Auction. Thus, LPN requested, and the District agreed, that the District's authorized bidder prepare and sign a Bid Submission Confirmation Sheet for each round, on which the bidder would note the date, time, and amount of the District's submitted bid. The parties also established that the District's authorized bidder would generate a Bid Summary from the FCC's Auction website that confirmed the time and amount of the bid. The District's three authorized bidders practiced the bidding process and followed the agreed procedural safeguards at a mock Auction in May 2016.

The District Is Dropped from the Auction After Failing to Submit a Bid

Bidding in the Auction began on May 31, 2016. Following an agreed strategy, Jan Roecks placed a bid on behalf of the District to accept the FCC's opening price offer of \$353,887,920. Ms. Roecks served as the District's authorized bidder in all but six rounds of the Auction—46 rounds in all—between May 31, 2016 and November 10, 2016. And she successfully placed bids on the District's behalf in 17 of those rounds. After doing so, her general practice—consistent with the agreed-upon procedures—was to sign the Bid Submission Confirmation Sheets and generate Bid Summaries from the FCC Auction website that confirmed the District's bids.

On November 15, 2016, Ms. Roecks failed to submit the District's bid. She has admitted² that she did not “think to actively submit a bid” and did not click the “bid” button “which we had done for all active rounds since May.” Nor did she follow her admitted “normal activity” in generating a Bid Summary confirmation from the FCC Auction website. But she nevertheless signed a Bid Submission Confirmation Sheet falsely stating that she had “submitted the bid according to bid strategy” at “7:12 AM PST” for Stage 3, Round 23, in the amount of \$114,494,613. Thus, the District not only failed to bid, but also (i) failed to follow its normal procedure of generating a confirmation directly from the FCC Auction website, (ii) certified that it had submitted a bid despite not obtaining that confirmation, and (iii) failed to verify whether it had submitted a bid during the remaining approximately one hour that Round 23 bidding

² Ms. Roecks drafted a memo containing her version of the events of November 15, 2016, which is attached as Exhibit A.

remained open. Under any definition, the District's carelessness—knowing that KCSM's continued participation in the Auction was on the line—constitutes gross negligence.

When Ms. Roecks logged into the FCC Auction website for the next round approximately three hours later, she learned that the District had been dropped from the Auction due to its failure to submit a bid in the prior round. She admitted that she realized the “omission” to submit a bid after “click[ing] around the system in panic.” Shortly thereafter, she wrote to the FCC that “[i]t appears we did not press a bid button” and “[w]e need to keep bidding.” Ms. Roecks reported that during a subsequent phone call, the FCC stated (as it had repeatedly warned) that the District had no recourse because “the auction is automated, is not built to reinstate bidders for any reason, and there was no way to get back into the auction regardless of the reason.” According to Ms. Roecks, the FCC “added that the auction results were already altered by [the District's] missed bid at 7AM so they could not force a reinstatement.” The bid window for that round was open only between 7:00 AM and 8:00 AM. Ms. Roecks reported that she immediately informed Chancellor Galatolo of the failed bid. Upon request from Chancellor Galatolo, Ms. Roecks and PwC both documented the events of the day and closed down the bidding for KCSM as it was no longer allowed to participate in the Auction.

The District Falsely Certifies Its Performance in Order to Continue Receiving Quarterly Payments from LPN

Because FCC rules prohibited communications between the District and LPN about the District's bids, the District did not inform LPN that it knew it had failed to submit a bid and had consequently been dropped from the Auction—a “Triggering Event” under the Funding Agreement because it was a “default in the performance of or compliance with” the District's contracts with LPN.

Instead of telling LPN nothing, however, the District told LPN just the opposite. Despite its admitted and known failure to bid, the District—in a compliance certificate signed by Executive Vice Chancellor Kathy Blackwood on December 16, 2016—certified that “[n]o event has occurred . . . that would constitute a Triggering Event” and the District had “performed in all material respects all agreements” with LPN.

The District's false certification enabled it to continue receiving quarterly funding payments from LPN, which LPN had no obligation to make unless (among other things) the District had performed its contractual obligations and no Triggering Events had occurred. In reliance on the District's false certification, LPN made its next quarterly payment of \$225,000 to the District on December 20, 2016.

The District did not withhold the December 16, 2016 certificate it knew was false. It did not segregate the December 20 payment that its false certification induced LPN to make. And even if the District had legitimate concerns about notifying LPN during the Quiet Period under the FCC's Prohibited Communications Rule, it did not alert LPN about its knowingly false certification (and the payment it induced) even after the Quiet Period ended on February 6, 2017, when the District had the opportunity to correct the record during a February 8, 2017 call with

LPN. Instead, the District boldly took LPN's money and stayed silent. The District's actions—and conspicuous inaction—bear all the hallmarks of fraud.

The District Changes Its Story and Denies Its Contractual Responsibilities

On the February 8, 2017 call initiated by LPN, the District denied that it was responsible for the actions—or inactions—of Jan Roecks related to the failed bid on November 15, 2016. The District did not deny that Jan Roecks failed to place the bid, but claimed that its only responsibility was to follow PwC's instructions. Contradicting Ms. Roecks' documentation of events, the District stated that its authorized bidders were merely "robots" acting at PwC's direction. While discovery will reveal whether Ms. Roecks' contemporaneous memo or the District's February 8 retelling is correct, what is clear under either version of events is that the District breached or abdicated its responsibility to submit bids under its agreements with LPN. Indeed, the District acknowledged in Attachment A to the Bid Management Agreement amendment that (i) "PwC is not assuming any additional duties or obligations directly to the District in connection with these services"; and (ii) PwC's responsibility was to notify the designated District representative if "the District's designated authorized bidders intend to take, or take, actions that are not consistent with the District's obligations under the Agreement and any related bidding strategy." Submitting the District's bid was the responsibility of the authorized bidders, the District, and nobody else, as the LPN contracts and FCC rules made clear.

HARM TO LPN

The District's breaches of its contracts with LPN have damaged LPN in at least three respects:

- The District's breaches deprived LPN of the Auction proceeds to which it would have been entitled had the District performed its obligations to (among other things) "take all actions necessary to cause the spectrum usage rights associated with [KCSM's] FCC License to be relinquished in the Auction." KCSM was well positioned to sell its spectrum in the Auction due to its location in a densely packed television market requiring the FCC to purchase the spectrum usage rights of multiple TV stations at attractive prices. Though the FCC is not expected to release final Auction results publicly until April 2017, on information and belief, spectrum usage rights for other full-power stations in the same television market were fully relinquished for amounts in excess of \$80 million. By failing to submit a bid in the Auction—the most fundamental "action[] necessary" to participate in the Auction—the District deprived LPN of its right to 36.5% of similar proceeds.
- In addition, LPN is also entitled to the \$3.375 million it has paid the District to date under the Funding Agreement, \$225,000 of which was paid in reliance on the District's knowingly false certification that (i) no Triggering Event had occurred, and (ii) the District had "performed in all material respects all agreements" with LPN. A Triggering Event resulting in a Material Adverse Effect had occurred because the District "default[ed] in the performance of or compliance with" its

contractual obligations to LPN. LPN therefore (i) declares its \$3.375 million of total payments to the District "immediately due and payable," and (ii) terminates any obligation to make any further payments under the Funding Agreement. Due to the District's willful breaches, the Funding Agreement requires the District to repay the \$3.375 million to LPN together with interest at an 8% annual rate.

- LPN's damages also include its attorneys' fees and costs incurred in investigating and asserting its claims against the District, to which it is entitled under the Funding Agreement.

THE DISTRICT'S RESPONSE

Under § 910.8, the District has 20 days from the date of its receipt of this letter to give LPN notice of any substantial defect in this notice. Otherwise, under § 912.4, the District has 45 days from the date of receipt to consider this notice and respond to LPN's claim. If the District rejects the claim, allows the claim for an unsatisfactory amount, or fails to act on this claim within 45 days, LPN intends to pursue its claims in court.

FURTHER INFORMATION TO SATISFY SECTION § 910

- The names and post office addresses of the claimants:

LocusPoint Networks, LLC
Pleasanton Corporate Commons
6200 Stoneridge Mall Road, Suite 300
Pleasanton, CA 94588

and

LocusPoint II KCSM, LLC
Pleasanton Corporate Commons
6200 Stoneridge Mall Road, Suite 300
Pleasanton, CA 94588

- The post office address to which the person presenting the claim desires notices to be sent:

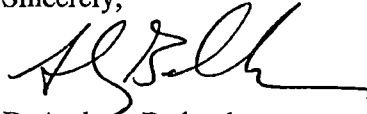
B. Andrew Bednark, Esq.
O'Melveny & Myers LLP
7 Times Square
New York, NY 10036

- Because LPN claims more than ten thousand dollars (\$10,000), a dollar amount of the claim is not included here. This claim would not be a limited civil case; it would be an unlimited case. See § 910.

O'MELVENY & MYERS LLP
February 21, 2017 - Page 9

The District has in its possession all of the relevant agreements described above. Should you require any additional information to process LPN's claims, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Andrew Bednark", with a long horizontal flourish extending to the right.

B. Andrew Bednark

EXHIBIT B

EXECUTION VERSION

FUNDING AGREEMENT

DATED AS OF MAY 16, 2013

BETWEEN

SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT

and

LOCUSPOINT NETWORKS, LLC

TABLE OF CONTENTS

	Page No.
SECTION 1. DEFINITIONS	1
1.1 Certain Defined Terms	1
1.2 Accounting Terms; Utilization of GAS for Purposes of Calculations Under Agreement	7
1.3 Other Definitional Provisions and Rules of Construction	7
SECTION 2. SUBSIDY PAYMENTS	8
2.1 Making of Subsidy Payments	8
SECTION 3. CONDITIONS TO SUBSIDY PAYMENTS.....	8
3.1 Conditions to Effective Date	8
3.2 Conditions to All Subsidy Payments	10
SECTION 4. REPRESENTATIONS AND WARRANTIES OF SMCCCD	10
4.1 Organization, Powers, Qualification, Good Standing.....	11
4.2 Effectiveness of Funding Documents	12
4.3 Financial Condition	12
4.4 No Material Adverse Change; No Interference	12
4.5 Title to Properties; Liens; Real Property	12
4.6 Litigation; Adverse Facts.....	13
4.7 Payment of Taxes	13
4.8 Performance of Agreements; Material Contracts	13
4.9 Employee Benefit Plans; Employee Matters	13
4.10 Certain Fees	13
4.11 Environmental Protection	14
4.12 Proceeds	14
4.13 Disclosure	14
SECTION 5. REPRESENTATIONS AND WARRANTIES OF LPN	14
5.1 Organization, Standing, Authority.....	14
5.2 Authorization and Binding Obligation	15
5.3 Absence of Conflicting Agreements.....	15
5.4 Availability of Funds	15
SECTION 6. AFFIRMATIVE COVENANTS.....	15
6.1 Financial Statements and Other Reports.....	15
6.2 Existence, etc	17
6.3 Payment of Taxes and Claims; Tax Returns.....	17
6.4 Maintenance of Properties; Insurance	17
6.5 Compliance with Laws, etc.	17
6.6 Environmental Matters	17
6.7 Proceeds Account	17
6.8 Conduct of Business	17
6.9 Performance of Obligations.....	17
6.10 Use of Proceeds	17
6.11 Access to Facilities	18
SECTION 7. NEGATIVE COVENANTS	18
7.1 Indebtedness	18
7.2 Liens and Related Matters	18

TABLE OF CONTENTS
(Continued)

	Page No.
7.3	Restriction on Fundamental Changes; Asset Sales.....18
SECTION 8.	NEGATIVE COVENANTS DURING A TRIGGERING EVENT OR AFTER THE FUNDING TERMINATION DATE18
8.1	Indebtedness18
8.2	Liens and Related Matters18
8.3	Restriction on Fundamental Changes; Asset Sales.....19
SECTION 9.	REIMBURSEMENT OBLIGATIONS.....19
9.1	Triggering Events19
9.2	Application of Payments; Payments Generally; Calculation of Interest21
SECTION 10.	MISCELLANEOUS21
10.1	Successors and Assigns21
10.2	Expenses22
10.3	Indemnity.....22
10.4	Amendments and Waivers; Termination.....22
10.5	Independence of Covenants.....22
10.6	Notices; Effectiveness of Signatures23
10.7	Survival of Representations, Warranties and Agreements23
10.8	Failure or Indulgence Not Waiver; Remedies Cumulative.....23
10.9	Payments Set Aside23
10.10	Severability23
10.11	Damage Waiver23
10.12	Applicable Law.....24
10.13	Construction of Agreement; Nature of Relationship24
10.14	Consent to Jurisdiction and Service of Process24
10.15	Confidentiality; Public Disclosure.....24
10.16	Counterparts; Effectiveness.....25

FUNDING AGREEMENT

This FUNDING AGREEMENT is dated as of May 16, 2013 and entered into by and between SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT, a California community college district ("SMCCCD"), and LOCUSPOINT NETWORKS, LLC, a Delaware limited liability company ("LPN").

RECITALS

WHEREAS, SMCCCD operates full-power noncommercial educational television station KCSM-TV (RF Channel 43), San Mateo, California (FCC Facility ID No. 58912) (the "Station") and holds the FCC License and other Governmental Authorizations for the operation of the Station; and

WHEREAS, LPN, at the request of SMCCCD, has agreed to partially fund the continued operation of the Station in consideration of the grant by SMCCCD of rights set forth in the Option Agreement and of the grant by SMCCCD of the rights set forth in this Agreement and the other Funding Documents;

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, SMCCCD and LPN agree as follows:

SECTION 1. DEFINITIONS

1.1 **Certain Defined Terms.** The following terms used in this Agreement shall have the following meanings:

"Affiliate", as applied to any Person, means any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling", "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise.

"Agreement" means this Funding Agreement dated as of May 16, 2013.

"Authorizing Resolution" has the meaning assigned to that term in subsection 4.2A.

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy", as now and hereafter in effect, or any successor statute.

"Bid Management Agreement" means that certain Bid Management Agreement by and among SMCCCD and LPN dated as of May 16, 2013.

"Bid Management Compensation" means the aggregate amount payable to LPN pursuant to Article VI of the Bid Management Agreement.

"Business Day" means any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of California or is a day on which banking institutions located in such state are authorized or required by law or other governmental action to close.

“Cash” means money, currency or a credit balance in a deposit account.

“Collateral Documents” means the Security Agreement, the Control Agreement and all other instruments or documents delivered by SMCCCD pursuant to this Agreement in order to grant to LPN a Lien on the Proceeds.

“Communications Act” means the Communications Act of 1934, as amended, and all rules, regulations, orders, written policies and decisions of the FCC thereunder or any successor statute or statutes, as from time to time in effect.

“Communications Regulatory Authority” means the FCC, any State PUC and any current or future Government Authority which has the specific jurisdiction to regulate the conduct of wireless or broadcast licensees or to otherwise regulate the communications activities of SMCCCD.

“Compliance Certificate” means a certificate substantially in the form of Exhibit I annexed hereto.

“Contingent Obligation”, as applied to any Person, means any direct or indirect liability, contingent or otherwise, of that Person (i) with respect to any Indebtedness, lease, dividend or other obligation of another if the primary purpose or intent thereof by the Person incurring the Contingent Obligation is to provide assurance to the obligee of such obligation of another that such obligation of another will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such obligation will be protected (in whole or in part) against loss in respect thereof, or (ii) with respect to any letter of credit issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings. Contingent Obligations shall include (a) the direct or indirect guaranty, endorsement (otherwise than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the obligation of another, (b) the obligation to make take-or-pay or similar payments if required regardless of non-performance by any other party or parties to an agreement, and (c) any liability of such Person for the obligation of another through any agreement (contingent or otherwise) (1) to purchase, repurchase or otherwise acquire such obligation or any security therefor, or to provide funds for the payment or discharge of such obligation (whether in the form of loans, advances, stock purchases, capital contributions or otherwise) or (2) to maintain the solvency or any balance sheet item, level of income or financial condition of another if, in the case of any agreement described under subclauses (1) or (2) of this sentence, the primary purpose or intent thereof is as described in the preceding sentence. The amount of any Contingent Obligation shall be equal to the amount of the obligation so guaranteed or otherwise supported or, if less, the amount to which such Contingent Obligation is specifically limited.

“Contractual Obligation”, as applied to any Person, means any provision of any Security issued by that Person or of any material indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

“Control Agreement” means an agreement, satisfactory in form and substance to LPN and executed by the financial institution at which the Proceeds Account is maintained, for the purposes of holding the Proceeds pursuant to which such financial institution confirms and acknowledges LPN's security interest in such account.

“Copyright Act” means the Copyright Act of 1976, as amended, including without limitation, all provisions of Title 17 of the United States Code and the rules and regulations thereunder, in each case as from time to time in effect.

“Dollars” and the sign **“\$”** mean the lawful money of the United States of America.

“Effective Date” means May 16, 2013.

“Employee Benefit Plan” means any “employee benefit plan” as defined in Section 3(3) of ERISA (whether or not subject to ERISA) which is or was maintained or contributed to by SMCCCD with respect to the Station.

“Environmental Claim” means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any Government Authority or any other Person, arising (i) pursuant to or in connection with any actual or alleged violation of any Environmental Law, (ii) in connection with any Hazardous Materials or any actual or alleged Hazardous Materials Activity, or (iii) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment.

“Environmental Laws” means any and all current or future statutes, ordinances, orders, rules, regulations, guidance documents, judgments, Governmental Authorizations, or any other requirements of any Government Authority relating to (i) environmental matters, including those relating to any Hazardous Materials Activity, (ii) the generation, use, storage, transportation or disposal of Hazardous Materials, or (iii) occupational safety and health, industrial hygiene, land use or the protection of human, plant or animal health or welfare, in any manner applicable to SMCCCD with respect to the Station or any Facility.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor thereto.

“Facilities” means any and all real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or heretofore owned, leased, operated or used by SMCCCD with respect to the Station.

“FCC” means the Federal Communications Commission and any successor governmental agency performing functions similar to those performed by the Federal Communications Commission on the date hereof.

“FCC License” means the Noncommercial Educational broadcast television license, as such term is defined in the rules, regulations or policies promulgated by the FCC, used in connection with the operation of the Station.

“FCC Rules” has the meaning assigned to that term in subsection 4.1D.

“First Priority” means, with respect to any Lien purported to be created in the Proceeds, pursuant to any Collateral Document, that (i) such Lien is perfected and has priority over any other Lien on such Proceeds and (ii) such Lien is the only Lien (other than Permitted Encumbrances) to which such Collateral is subject.

“Fiscal Year” means the fiscal year of SMCCCD ending on June 30 of each calendar year.

“Funding Date” means the date of funding of a Subsidy Payment.

“Funding Documents” means this Agreement, the Option Agreement, the Bid Management Agreement and the Collateral Documents.

“Funding Termination Date” means the later of July 1, 2017 and the date upon which LPN is scheduled to make the last Extension Subsidy Payment (as such term is defined in the Option Agreement), if any.

“GAS” means, subject to the limitations of the application thereof set forth in subsection 1.2, the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States, in each case as the same are applicable to the circumstances as of the date of determination.

“Governing Body” means the board of directors or other body having the power to direct or cause the direction of the management and policies of a Person that is a Government Authority, corporation, partnership, trust or limited liability company.

“Government Authority” means the government of the United States or any other nation, or any state, regional or local political subdivision or department thereof, and any other governmental or regulatory agency, authority, body, commission, central bank, board, bureau, organ, court, instrumentality or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, in each case whether federal, state, local or foreign (including the FCC, the County of San Mateo, the State of California and supra-national bodies such as the European Union or the European Central Bank).

“Governmental Authorization” means any permit, license, registration, authorization, plan, directive, accreditation, consent, order or consent decree of or from, or notice to, any Government Authority (including the FCC, the County of San Mateo and the State of California).

“Hazardous Materials” means: (i) any chemical, material or substance at any time defined as or included in the definition of “hazardous substances”, “hazardous wastes”, “hazardous materials”, “extremely hazardous waste”, “acutely hazardous waste”, “radioactive waste”, “biohazardous waste”, “pollutant”, “toxic pollutant”, “contaminant”, “restricted hazardous waste”, “infectious waste”, “toxic substances”, or any other term or expression intended to define, list or classify substances by reason of properties harmful to health, safety or the indoor or outdoor environment (including harmful properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, “TCLP toxicity” or “EP toxicity” or words of similar import under any applicable Environmental Laws); (ii) any oil, petroleum, petroleum fraction or petroleum derived substance; (iii) any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources; (iv) any flammable substances or explosives; (v) any radioactive materials; (vi) any asbestos-containing materials; (vii) urea formaldehyde foam insulation; (viii) electrical equipment which contains any oil or dielectric fluid containing polychlorinated biphenyls; (ix) pesticides; and (x) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Government Authority or which may or could pose a hazard to the health and safety of the owners, occupants or any Persons in the vicinity of any Facility or to the indoor or outdoor environment.

“Hazardous Materials Activity” means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Materials, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Materials, and any corrective action or response action with respect to any of the foregoing.

“Indebtedness”, as applied to any Person, means (i) all indebtedness for borrowed money, (ii) that portion of obligations with respect to capital leases that is properly classified as a liability on a balance sheet in conformity with GAS, (iii) notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money, (iv) any obligation owed for all or any part of the deferred purchase price of property or services, which purchase price is (a) due more than six months from the date of incurrence of the obligation in respect thereof or (b) evidenced by a note or similar written instrument, (v) all indebtedness secured by any Lien on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby shall have been assumed by that Person or is nonrecourse to the credit of that Person and (vi) all Contingent Obligations of such Person in respect of Indebtedness of others of the kinds referred to in clauses (i) through (v) above.

“Indemnitee” has the meaning assigned to that term in subsection 10.3.

“Joint Venture” means a joint venture, partnership or other similar arrangement, whether in corporate, partnership or other legal form.

“Lien” means any lien, mortgage, pledge, assignment, security interest, charge or encumbrance of any kind (including any conditional sale or other title retention agreement, any lease in the nature thereof, and any agreement to give any security interest) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing.

“Losses” has the meaning assigned to that term in subsection 10.3.

“LPN” has the meaning assigned to that term in the introductory paragraph to this Agreement.

“LPN Account” means an account as may be designated in writing by LPN from time to time.

“LPN Indemnified Party” has the meaning assigned to that term in subsection 10.3.

“Material Adverse Effect” means (i) a material adverse effect upon the business, operations, properties, assets, condition (financial or otherwise) or the operation of the Station or (ii) the impairment of the ability of SMCCCD to perform, or of LPN to enforce, the Reimbursement Obligations or any other material obligations under any Funding Document.

“Material Contract” means any contract or other arrangement to which SMCCCD is a party (other than the Funding Documents) relating to or used in the operation of the Station for which breach, nonperformance, cancellation or failure to renew could have a Material Adverse Effect.

“Multiemployer Plan” means any Employee Benefit Plan that is a “multiemployer plan” as defined in Section 3(37) of ERISA.

“Officer” means the president, chief executive officer, a vice president, chief financial officer, treasurer, general partner (if an individual), managing member (if an individual) or other individual appointed by the Governing Body or the Organizational Documents of a Government Authority, corporation, partnership, trust or limited liability company to serve in a similar capacity as the foregoing.

“Officer’s Certificate”, as applied to any Person, means a certificate executed on behalf of such Person by one or more Officers of such Person or one or more Officers of a general partner or a managing member of such Person.

“Option Agreement” means that certain Put/Call Option Agreement by and among SMCCCD and LPN dated as of May 16, 2013.

“Option Termination Date” means December 31, 2025.

“Organizational Documents” means the statute or documents (including Bylaws, if applicable) pursuant to which a Person (other than a natural Person) is organized.

“Pension Plan” means any Employee Benefit Plan, other than a Multiemployer Plan, in the nature of a “defined benefit” pension plan.

“Person” means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, Joint Ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and Government Authorities.

“Potential Triggering Event” means a condition or event that, after notice or lapse of time or both, would constitute a Triggering Event.

“Proceedings” means any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration.

“Proceeds” means the proceeds from an Auction Sale, Call Option Sale or Put Option Sale, as such terms are defined the Option Agreement.

“Proceeds Account” has the meaning set forth in subsection 6.7.

“Reimbursement Obligations” means all obligations of every nature of SMCCCD from time to time owed to LPN under the Funding Documents, whether for reimbursement of any Subsidy Payment, interest, expenses, indemnification or otherwise.

“Release” means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Materials into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Materials), including the movement of any Hazardous Materials through the air, soil, surface water or groundwater.

“Securities” means any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated, certificated or uncertificated, or otherwise, or in general any instruments commonly known as “securities” or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

“Security Agreement” means the Security Agreement executed and delivered on the Effective Date, substantially in the form of Exhibit II annexed hereto, granting LPN a security interest in the Proceeds.

“SMCCCD” has the meaning assigned to that term in the introduction to this Agreement.

“SMCCCD Indemnified Party” has the meaning assigned to that term in subsection 10.3 of this Agreement.

“State Law” means any state law pertaining to or regulating intrastate and local telecommunications services, or any successor statute or statutes thereto, and all State Regulations pursuant to such State Law, in each case as from time to time in effect.

“State PUC” means any state public utility commission or any other state commission, agency, department, board or authority with responsibility for regulating intrastate and local telecommunications services.

“State Regulations” means all rules, regulations, written policies, orders and decisions of any State PUC.

“Station” has the meaning assigned to that term in the recitals to this Agreement.

“Subsidiary”, with respect to any Person, means any corporation, partnership, trust, limited liability company, association, Joint Venture or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the members of the Governing Body is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other subsidiaries of that Person or a combination thereof.

“Subsidy Payment” has the meaning assigned to that term in subsection 2.1 A.

“Triggering Event” means each of the events set forth in subsection 9.1.

“UCC” means the Uniform Commercial Code as in effect in any applicable jurisdiction.

“Willful Breach” has the meaning assigned to that term in subsection 9.1.

1.2 Accounting Terms; Utilization of GAS for Purposes of Calculations Under Agreement. Except as otherwise expressly provided in this Agreement, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAS. Financial statements and other information required to be delivered by SMCCCD to LPN pursuant to clauses (ii), (iii) and (viii) of subsection 5.1 shall be prepared in accordance with GAS as in effect at the Effective Date. Calculations in connection with the definitions, covenants and other provisions of this Agreement shall utilize GAS as in effect on the Effective Date. If at any time any change in GAS would affect the computation of any requirement set forth in any Funding Document, and SMCCCD or LPN shall so request, SMCCCD and LPN shall negotiate in good faith to amend such requirement to preserve the original intent thereof in light of such change in or GAS provided that, until so amended, such requirement shall continue to be computed in accordance with GAS prior to such change therein.

1.3 Other Definitional Provisions and Rules of Construction. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. References to “Sections” and “subsections” shall be to Sections and subsections, respectively, of this Agreement unless otherwise specifically provided. Section and subsection headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect. The use in any of the Funding

Documents of the word “include” or “including”, when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. Unless otherwise expressly provided herein, references to Organizational Documents, agreements (including the Funding Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto.

SECTION 2. SUBSIDY PAYMENTS

2.1 Making of Subsidy Payments.

A. Subsidy Payments. Subject to the terms and conditions of this Agreement and in reliance upon the representations and warranties of SMCCCD herein set forth, LPN hereby agrees to disburse to SMCCCD from time to time during the period from and after the Effective Date to and including the Funding Termination Date an amount not exceeding the sum of (x) \$3,600,000, (y) the aggregate amount of any Extension Subsidy Payments (as such term is defined in the Option Agreement), and (z) the Bid Management Compensation (collectively, the “**Subsidy Payments**”) to be used for the purposes identified in subsection 6.10. Subject to the terms and conditions of this Agreement, (i) the Subsidy Payments shall be made in sixteen (16) equal installments (which initial number of Subsidy Payments may be increased by up to four (4) additional Subsidy Payments in the circumstances described in Section 2(b) of the Option Agreement), (ii) each Subsidy Payment shall be in an amount equal to \$225,000 (which shall be the amount net of the Bid Management Compensation then payable to LPN pursuant to the terms of the Bid Management Agreement), (iii) the first Subsidy Payment shall be made on July 1, 2013, and (iv) each subsequent Subsidy Payment shall be made on the first day of each October, January, April and July (commencing with October 1, 2013). Any obligation of LPN to make Subsidy Payments shall expire immediately and without further action on the Funding Termination Date if the Subsidy Payments are not made on or before such date.

B. Funding of Subsidy Payments. Subject to the satisfaction or waiver of the conditions precedent specified in subsections 3.1 and 3.2, LPN shall make the first Subsidy Payment to SMCCCD on July 1, 2013 by wiring the payment to the SMCCCD Account. Subject to the satisfaction or waiver after July 1, 2013 of the conditions precedent specified in subsection 3.2, LPN shall make each subsequent Subsidy Payment to SMCCCD on the applicable Funding Date by wiring the payment to the SMCCCD Account. In accordance with Section 1(b) of the Option Agreement, in the event that LPN fails to make any Subsidy Payment within three days of its due date, the LPN Share, as defined and applied in the Option Agreement, shall be reduced by an amount equal to 2.28125% multiplied by the Gross Auction Proceeds or Gross Sale Proceeds, as applicable, for each such failure, e.g., from 36.5% to 34.21875% in the case of one late payment.

SECTION 3. CONDITIONS TO SUBSIDY PAYMENTS

The obligation of LPN to make Subsidy Payments hereunder is subject to the satisfaction of the following conditions:

3.1 Conditions to Effective Date. The effectiveness of this Agreement on the Effective Date is subject to prior or concurrent satisfaction of the following conditions:

A. SMCCCD Documents. On or before the Effective Date, SMCCCD shall deliver to LPN the following, each, unless otherwise noted, dated the Effective Date:

- (i) A copy of or reference to the current provisions of California Law that authorize and empower SMCCCD;
- (ii) A copy of the minutes of a meeting of the Board of Directors of SMCCCD approving and authorizing the execution, delivery and performance of the Funding Documents to which it is a party, certified as of the Effective Date by an officer of SMCCCD;
- (iii) Executed copies of the Funding Documents to which SMCCCD is party;
and
- (iv) Such other documents as LPN may reasonably request.

B. Representations and Warranties; Performance of Agreements. SMCCCD shall have delivered to LPN an Officer's Certificate, in form and substance satisfactory to LPN, to the effect that the representations and warranties in Section 4 are true, correct and complete in all material respects on and as of the Effective Date to the same extent as though made on and as of that date (or, to the extent such representations and warranties specifically relate to an earlier date, that such representations and warranties were true, correct and complete in all material respects on and as of such earlier date) and that SMCCCD shall have performed in all material respects all agreements and satisfied all conditions which this Agreement provides shall be performed or satisfied by it on or before the Effective Date except as otherwise disclosed to and agreed to in writing by LPN; provided that, if a representation and warranty, covenant or condition is qualified as to materiality, the applicable materiality qualifier set forth above shall be disregarded with respect to such representation and warranty, covenant or condition for purposes of this condition.

C. Opinions of Counsel to SMCCCD. LPN shall have received originally executed copies of the written opinion of Schwartz, Woods & Miller, special FCC counsel for SMCCCD, in form and substance reasonably satisfactory to LPN and its counsel, dated as of the Effective Date and setting forth substantially such matters as LPN may reasonably request.

D. Security Interests in Proceeds. LPN shall have received evidence satisfactory to it that SMCCCD shall have taken or caused to be taken all such actions, including executing and delivering the Security Agreement and the Control Agreement and any other agreements, documents and instruments, and making all such filings and recordings that may be necessary or, in the reasonable opinion of LPN desirable, in order to create in favor of LPN a valid and (upon such filing and recording) perfected First Priority security interest in the Proceeds to the extent of LPN's interest therein.

E. Necessary Governmental Authorizations and Consents; Expiration of Waiting Periods, Etc. SMCCCD shall have obtained all Governmental Authorizations and all consents of other Persons, in each case that are necessary or advisable in connection with the transactions contemplated by the Funding Documents on the Effective Date. Each such Governmental Authorization and consent shall be in full force and effect, except in a case where the failure to obtain or maintain a Governmental Authorization or consent, either individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. All applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain, prevent or otherwise impose adverse conditions on the financing. No action, request for stay, petition for review or rehearing, reconsideration, or appeal with respect to any of the foregoing shall be pending, and the time

for any applicable Government Authority to take action to set aside its consent on its own motion shall have expired.

F. Evidence of Insurance. LPN shall have received a certificate from SMCCCD's insurance broker or other evidence satisfactory to it that all insurance required to be maintained pursuant to subsection 6.4 is in full force and effect.

G. FCC License. LPN shall be satisfied that all rights and remedies of LPN under the Funding Documents shall not conflict with or cause a breach or default under the FCC License.

3.2 Conditions to All Subsidy Payments. The obligation of LPN to make each Subsidy Payment on the applicable Funding Date is subject to the following conditions precedent:

A. As of such Funding Date:

(i) The representations and warranties contained herein and in the other Funding Documents shall be true, correct and complete in all material respects on and as of that Funding Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true, correct and complete in all material respects on and as of such earlier date; provided, that, if a representation and warranty is qualified as to materiality, the materiality qualifier set forth above shall be disregarded with respect to such representation and warranty for purposes of this condition;

(ii) No event shall have occurred and be continuing or would result from the making of such Subsidy Payment that would constitute a Triggering Event or a Potential Triggering Event;

(iii) SMCCCD shall have performed in all material respects all agreements and satisfied all conditions which this Agreement and each other Funding Agreement provides shall be performed or satisfied by it on or before that Funding Date;

(iv) No order, judgment or decree of any arbitrator or Government Authority shall purport to enjoin or restrain LPN from making the Subsidy Payment to be made by it on that Funding Date;

(v) No FCC License will have been forfeited or materially impaired as of such Funding Date for any reason, including as a result of or in connection with any Funding Document or the transactions contemplated hereby or thereby;

(vi) No Material Adverse Effect shall have occurred as of such Funding Date;

(vii) LPN shall have received before such Funding Date a duly executed Compliance Certificate attesting to the matters set forth in this subsection 3.2A signed by a duly authorized Officer of SMCCCD; and

(viii) SMCCCD shall have delivered such other certificates or documents that LPN shall reasonably request, in form and substance satisfactory to LPN.

SECTION 4. REPRESENTATIONS AND WARRANTIES OF SMCCCD

In order to induce LPN to enter into this Agreement and to make the Subsidy Payments, each of SMCCCD represents and warrants to LPN:

4.1 Organization, Powers, Qualification, Good Standing.

A. Organization and Powers. SMCCCD is a California community college district duly organized, validly existing and in good standing under the laws of the State of California. SMCCCD has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Funding Documents to which it is a party and to carry out the transactions contemplated thereby.

B. Qualification and Good Standing. SMCCCD is qualified to do business and in good standing in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations.

C. Conduct of Business. SMCCCD is operating the Station in the manner required by subsection 6.8.

D. FCC License and other Governmental Authorizations. Schedule 4.1D annexed hereto accurately and completely lists the FCC License and other Governmental Authorizations that have been granted or assigned to SMCCCD by the FCC, any other Communications Regulatory Authority or any other Governmental Authority, including all Governmental Authorizations for the operation of the Station, and the FCC License and other Governmental Authorizations (a) are in full force and effect in all respects and (b) comprise all of the licenses, permits, approvals and authorizations necessary under the Communications Act and the rules, regulations and policies of the FCC (the "FCC Rules") for the operation of the Station as presently operated and conducted. The FCC License is not subject to any restriction or condition other than those set forth in the FCC License. Schedule 4.1D also accurately and completely lists all agreements, if any, for the use of public utility facilities in connection with the Station. Except as specified in Schedule 4.1D annexed hereto, neither the FCC License nor any other Governmental Authorization issued to SMCCCD with regard to the Station has a term which will expire prior to the Option Termination Date. SMCCCD does not have any knowledge of the occurrence of any event or the existence of any circumstance which is likely to lead to the revocation, suspension, amendment or non-renewal of the FCC License or other Governmental Authorization, and there are no applications, investigations, complaints, objections, petitions or proceedings pending or, to SMCCCD's knowledge, threatened before the FCC or any other Governmental Authority relating to the Station, except for proceedings of general applicability to television broadcast stations. The FCC License and all other Governmental Authorizations used by SMCCCD are held by it.

E. Communications Act and State Law. SMCCCD has duly filed in a timely manner all reports, forms, applications and statements required to be filed by SMCCCD with the FCC or any other Governmental Authority or required by the FCC or any other Governmental Authority to be maintained by SMCCCD with respect to the Station since the dates SMCCCD has operated the Station, and they are in all material respects accurate and complete and in compliance with the Communications Act and State Law, including, without limitation, the FCC Rules and the rules and regulations of any other Communications Regulatory Authority. The conduct of the business and operations of the Station are in compliance in all respects with the FCC's radiation standards applicable to the Station. The conduct of the business and operations of the Station are in compliance in all material respects with all applicable engineering and other standards required to be met under applicable federal, state and local laws, rules, regulations, requirements and policies, including FCC Rules and the Communications Act,

and are otherwise in compliance in all material respects with all applicable federal, state and local laws, rules, regulations, requirements and policies, including FCC Rules and the Communications Act. SMCCCD is not liable to any Person for material copyright infringement under the Copyright Act as a result of its business operations.

4.2 Effectiveness of Funding Documents.

A. Authorization of Funding Documents. The execution, delivery and performance of the Funding Documents has been duly authorized by all necessary action on the part of SMCCCD.

B. No Conflict. The execution, delivery and performance by SMCCCD of the Funding Documents and the consummation of the transactions contemplated by the Funding Documents, as applicable, do not and will not (i) violate any provision of any law or any governmental rule or regulation applicable to SMCCCD or any order, judgment or decree of any court or other Government Authority binding on SMCCCD, (ii) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any Contractual Obligation of SMCCCD, (iii) result in or require the creation or imposition of any Lien upon any of the properties or assets of SMCCCD (other than any Liens created under any of the Funding Documents in favor of LPN), or (iv) require any approval or consent of any Person under any Contractual Obligation of SMCCCD.

C. Governmental Consents. The execution, delivery and performance by SMCCCD of the Funding Documents to which it is party, and the consummation of the transactions contemplated by the Funding Documents, as applicable, do not and will not require any Governmental Authorization other than that of SMCCCD.

D. Binding Obligation. Each of the Funding Documents to which it is party has been duly executed and delivered by SMCCCD and is the legally valid and binding obligation of SMCCCD, enforceable against SMCCCD in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

4.3 Financial Condition. SMCCCD does not have (and will not have) any Indebtedness, contingent liability or liability for taxes, long-term lease or unusual forward or long-term commitment that, as of any Funding Date, is not reflected in the most recent financial statements delivered to LPN pursuant to subsection 5.1 or the notes thereto and that, in any such case, is material in relation to the business, operations, properties, assets, condition (financial or otherwise) or prospects of SMCCCD with respect to the operation of the Station.

4.4 No Material Adverse Change; No Interference. Since June 30, 2012, no event or change has occurred that has resulted in a Material Adverse Effect. There is currently no legal or regulatory proceeding, including interventions by the public or any Government Authority pending, or to the knowledge of SMCCCD threatened, that could reasonably be expected to materially frustrate, impair or limit the consummation of any of the transactions contemplated by or under the Funding Documents (including the participation by SMCCCD in, or the assignment of the FCC License or surrender of the spectrum used in the operation of the Station pursuant to, the Auction, a Call Option Sale or Put Option Sale (as such terms are defined in the Option Agreement)) or otherwise to have a Material Adverse Effect.

4.5 Title to Properties; Liens; Real Property. SMCCCD has (i) good, sufficient and legal title to (in the case of fee interests in real property), (ii) valid leasehold interests in (in the case of leasehold interests in real or personal property), or (iii) good title to (in the case of all other personal

property), all of its properties and assets used in the operation of the Station and reflected in the most recent financial statements delivered pursuant to subsection 5.1, in each case except for assets disposed of since the date of such financial statements as permitted under subsections 7.3 and 8.3. Except as permitted by this Agreement, all such properties and assets are free and clear of Liens. Schedule 4.5 annexed hereto contains a true, accurate and complete list of all leases, subleases or assignments of leases (together with all amendments, modifications, supplements, renewals or extensions of any thereof) of real property used in connection with the operation of the Station. Each agreement listed on Schedule 4.5 as a result of the immediately preceding sentence is in full force and effect and SMCCCD does not have knowledge of any default that has occurred and is continuing thereunder, and each such agreement constitutes the legally valid and binding obligation of SMCCCD, enforceable against SMCCCD in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles.

4.6 Litigation; Adverse Facts. There are no Proceedings (whether or not purportedly on behalf of SMCCCD) at law or in equity, or before or by any court or other Government Authority (including any Environmental Claims) that are pending or, to the knowledge of SMCCCD, threatened against or affecting SMCCCD with respect to the Station or any property of SMCCCD used in connection with the Station which, if adversely determined, has a reasonable possibility after giving effect to the coverage and policy limits of insurance policies issued to SMCCCD, of giving rise to a Material Adverse Effect. SMCCCD is not (i) in material violation of any applicable laws (including Environmental Laws), or (ii) subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or other Government Authority.

4.7 Payment of Taxes. SMCCCD is not subject to taxation other than with respect to employment and sales and use taxes. Except to the extent permitted by subsection 5.3, all tax returns and reports of SMCCCD required to be filed by it have been timely filed, and all taxes shown on such tax returns to be due and payable and all assessments, fees and other governmental charges upon SMCCCD and upon their respective properties, assets, income, businesses and franchises that are due and payable have been paid when due and payable. SMCCCD does not know of any proposed tax assessment against it that is not being actively contested by SMCCCD in good faith and by appropriate proceedings; provided that such reserves or other appropriate provisions, if any, as shall be required in conformity with GAS shall have been made or provided therefor.

4.8 Performance of Agreements; Material Contracts. SMCCCD is not in material default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations with respect to the Station, and no condition exists that, with the giving of notice or the lapse of time or both, would constitute such a material default. Schedule 4.8 contains a true, correct and complete list of all the Material Contracts in effect. Except as described on Schedule 4.8, all such Material Contracts are in full force and effect and no material defaults currently exist thereunder.

4.9 Employee Benefit Plans; Employee Matters. With respect to the Station, SMCCCD is in compliance in all material respects with all applicable provisions and requirements of each Employee Benefit Plan and with the requirements of any statutes, orders, rules and regulations which are applicable to each Employee Benefit Plan, and has performed in all material respects all its obligations under each Employee Benefit Plan. SMCCCD in connection with the Station does not have any potential liability under any Pension Plan or any Multiemployer Plan. With respect to the Station, there is no strike or work stoppage in existence or threatened involving SMCCCD.

4.10 Certain Fees. No broker's or finder's fee or commission will be payable with respect to this Agreement or any of the transactions contemplated hereby because of any representation or agreement by SMCCCD, which hereby indemnifies LPN against, and agrees that it will hold LPN harmless from, any claim, demand or liability for any such broker's or finder's fees alleged to have been incurred in connection herewith or therewith and any expenses (including reasonable fees, expenses and disbursements of counsel) arising in connection with any such claim, demand or liability.

4.11 Environmental Protection. With respect to the Station, SMCCCD and its Facilities or operations are not subject to any outstanding written order, consent decree or settlement agreement concerning the Station with any Person relating to (a) any Environmental Law, (b) any Environmental Claim, or (c) any Hazardous Materials Activity that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect; SMCCCD has not received any letter or request for information under Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9604) or any comparable state law; there are and, to SMCCCD's knowledge, have been no conditions, occurrences, or Hazardous Materials Activities that could reasonably be expected to form the basis of an Environmental Claim against SMCCCD that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect; neither SMCCCD nor, to SMCCCD's knowledge, any predecessor of SMCCCD has filed any notice under any Environmental Law indicating past or present treatment of Hazardous Materials at any Facility, and none of SMCCCD's operations involves the generation, transportation, treatment, storage or disposal of hazardous waste, as defined under 40 C.F.R. Parts 260-270 or any state equivalent; and SMCCCD is in compliance with all current or reasonably foreseeable future requirements pursuant to or under Environmental Laws would not, individually or in the aggregate, be reasonably expected to result in a Material Adverse Effect

4.12 Matters Relating to Proceeds. No authorization, approval or other action by, and no notice to or filing with, any Government Authority is required for either the grant by SMCCCD of the Lien purported to be created in favor of LPN in its share of the Proceeds or (ii) the exercise by LPN of any rights or remedies in respect of its security interest in its share of the Proceeds or under the Control Agreement. Except such as may have been filed in favor of LPN as contemplated by the Security Agreement, no effective UCC financing statement, or other instrument similar in effect covering all or any part of the Proceeds Account is on file in any filing or recording office. All information supplied to LPN by or on behalf of SMCCCD with respect to the Proceeds Account is accurate and complete in all respects.

4.13 Disclosure. No representation or warranty of SMCCCD contained in any Funding Document or in any other document, certificate or written statement furnished to LPN by or on behalf of SMCCCD for use in connection with the transactions contemplated by this Agreement contains any untrue statement of a material fact or omits to state a material fact (known to SMCCCD, in the case of any document not furnished by it) necessary in order to make the statements contained herein or therein not misleading in light of the circumstances in which the same were made. Any projections and pro forma financial information contained in such materials are based upon good faith estimates and assumptions believed by SMCCCD to be reasonable at the time made, it being recognized by LPN that such projections as to future events are not to be viewed as facts and that actual results during the period or periods covered by any such projections may differ from the projected results. There are no facts known (or which should upon the reasonable exercise of diligence be known) to SMCCCD (other than matters of a general economic nature) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect and that have not been disclosed herein or in such other documents, certificates and statements furnished to LPN for use in connection with the transactions contemplated hereby.

SECTION 5. REPRESENTATIONS AND WARRANTIES OF LPN

In order to induce SMCCCD to enter into this Agreement, LPN represents and warrants to SMCCCD:

5.1 Organization, Standing and Authority. LPN is a limited liability corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, with all requisite power under its organization documents to enter into and perform this Agreement and the transactions contemplated hereby.

5.2 Authorization and Binding Obligation. The execution, delivery, and performance by LPN of the Funding Documents, and the consummation by LPN of the transactions contemplated hereby, have been duly authorized by all necessary corporate action. This Agreement has been duly executed and delivered by LPN. This Agreement constitutes the legal, valid, and binding obligation of LPN, enforceable against LPN in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting the rights of creditors generally or by general principles of equity.

5.3 Absence of Conflicting Agreements. The execution, delivery, and performance by LPN of this Agreement (with or without the giving of notice, the lapse of time, or both) (i) do not require the consent of any third party; (ii) will not conflict with, result in a breach of, or constitute a default under, any applicable law, judgment, order, rule or regulation of any court or governmental unit to which LPN is a party or by which LPN is bound; and (iii) will not conflict with, constitute grounds for termination of, result in a breach of, constitute a default under, or accelerate or permit the acceleration of any performance required by, the terms of, any agreement, instrument, license, or permit to which LPN is a party or by which LPN may be bound.

5.4 Availability of Funds. LPN has cash available or has existing borrowing facilities that are available (and not subject to conditions precedent or other restrictions) that together are sufficient to enable it to make the Subsidy Payments and to consummate the transactions contemplated by this Agreement.

SECTION 6. AFFIRMATIVE COVENANTS

SMCCCD covenants and agrees that, until the earlier of (i) the payment in full of all of the Reimbursement Obligations (other than any unasserted claims for expense reimbursement or indemnification under subsections 10.2 or 10.3) and (ii) the consummation of any Auction Sale, Call Option Sale or Put Option Sale (as such terms are defined in the Option Agreement), SMCCCD shall perform all covenants in this Section 6.

6.1 Financial Statements and Other Reports.

SMCCCD will maintain a system of accounting established and administered in accordance with sound business practices to permit preparation of financial statements in conformity with GAS. With respect to the Station, SMCCCD will deliver to LPN:

(i) Triggering Events, etc.: promptly upon any officer of SMCCCD obtaining knowledge (a) of any condition or event that constitutes a Triggering Event or Potential Triggering Event, (b) that any Person has given any notice to SMCCCD or taken any other action with respect to a claimed default or event or condition of the type referred to in subsection 9.1A, or (c) of the occurrence of any event or change that has

caused or evidences, either in any case or in the aggregate, a Material Adverse Effect, an Officer's Certificate specifying the nature and period of existence of such condition, event or change, or specifying the notice given or action taken by any such Person and the nature of such claimed Triggering Event, Potential Triggering Event, default, event, condition or change, and what action SMCCCD has taken, is taking and proposes to take with respect thereto;

(ii) Year-End Financials: as soon as available and in any event when provided to the Corporation for Public Broadcasting (a) the Annual Financial Report for the Station as prepared and certified by independent certified public accountants and (b) a copy of its Local Content and Service Report prepared in accordance with the requirements of the Corporation for Public Broadcasting;

(iii) Annual Budget: as soon as available, the Station's annual budget (in reasonable detail) for the next Fiscal Year;

(iv) Officer's Certificate: at the commencement of each Fiscal Year an Officer's Certificate certifying to the availability of funds sufficient to meet any Reimbursement Obligations of SMCCCD during the next Fiscal Year.

(v) Litigation or Other Proceedings: promptly upon any Officer of SMCCCD obtaining knowledge of (1) the institution of, or non-frivolous threat of, any Proceeding against or affecting SMCCCD or any of its property not previously disclosed in writing by SMCCCD to LPN or (2) any material development in any Proceeding that, in any case: (x) if adversely determined, has a reasonable possibility after giving effect to the coverage and policy limits of insurance policies issued to SMCCCD, of giving rise to a Material Adverse Effect; (y) seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby; or (z) could affect in any way any FCC License, except for Proceedings of general applicability to television broadcast stations; written notice thereof together with such other information as may be reasonably available to SMCCCD to enable LPN and its counsel to evaluate such matters;

(vi) Employee-Related Events: promptly upon the occurrence of any strike or work stoppage or becoming aware of any threatened strike or work stoppage, a written notice specifying the nature thereof, what action SMCCCD has taken, is taking or proposes to take with respect thereto;

(vii) Licenses, Regulations, etc.: promptly (and in any event within 2 Business Days) upon receipt of notice of (a) any forfeiture, non-renewal, cancellation, termination, revocation, suspension, material impairment or material modification of any FCC License or other material Governmental Authorization used by SMCCCD in the operation of the Station, or any notice of material default with respect to any such FCC License or other such material Governmental Authorization, (b) any refusal by the FCC or any other Communications Regulatory Authority to renew or extend any FCC License or other material Governmental Authorization used in the operation of the Station, (c) any complaint filed by or with the FCC or other Government Authority in connection with the Station, (d) any show cause order issued by the FCC in connection with the Station, (e) any disruption, interruption or discontinuation (even if temporary) with respect to the Station, or (f) any other event that could reasonably be expected to have a material adverse effect on any FCC License (other than events of general applicability to

television broadcast stations), an Officers' Certificate specifying the nature of such event, the period of existence thereof, and what action SMCCCD is taking and proposes to take with respect thereto; and

(viii) Other Information: with reasonable promptness, such other information and data as from time to time may be reasonably requested by LPN concerning the expenditures of the Station or its business or operations.

6.2 Existence, etc. Except as permitted under subsections 7.3 and 8.3, SMCCCD will at all times preserve and keep in full force and effect all rights and franchises material to its business (including, without limitation, the FCC License).

6.3 Payment of Taxes and Claims; Tax Returns. With respect to the Station, SMCCCD will pay all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of their properties or assets prior to the time when any penalty or fine shall be incurred with respect thereto; provided that no such claim need be paid if it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as such reserve or other appropriate provision, if any, as shall be required in conformity with GAS shall have been made.

6.4 Maintenance of Properties; Insurance. SMCCCD will maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted, all material properties used in connection with the operation of the Station and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof. SMCCCD will maintain or cause to be maintained such self-insurance and commercial insurance coverage as it has maintained during the past Fiscal Year, consistent with State requirements.

6.5 Compliance with Laws, etc. With respect to the Station, SMCCCD shall comply in all material respects with the requirements of all applicable laws, rules, regulations and orders (including all Environmental Laws) of any Government Authority (including the FCC and any other Communications Regulatory Authority).

6.6 Environmental Matters. With respect to the Station, SMCCCD will deliver to LPN, promptly upon the occurrence thereof, written notice describing in reasonable detail (a) any material Environmental Claims that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, and (b) SMCCCD's discovery of any occurrence or condition on any real property adjoining or in the vicinity of any Facility that could cause such Facility or any part thereof to be subject to any material restrictions on the ownership, occupancy, transferability or use thereof under any Environmental Laws. SMCCCD shall promptly take any and all actions necessary to (i) cure any violation of applicable Environmental Laws by SMCCCD that could reasonably be expected to result in, individually or in the aggregate, any material penalty and (ii) make an appropriate response to any Environmental Claim against SMCCCD and discharge any obligations it may have to any Person thereunder.

6.7 Proceeds Account. SMCCCD shall maintain a deposit account subject to the Control Agreement in favor of LPN with respect to LPN's share of the Proceeds (the "**Proceeds Account**").

6.8 Conduct of Business. From and after the Effective Date, and except as expressly contemplated in the Funding Documents, SMCCCD shall continue to operate the Station in substantially the same manner as operated prior to the Effective Date.

6.9 Performance of Obligations. SMCCCD shall (i) perform all of its obligations under the terms of each Funding Document and (ii) take all actions necessary to cause the spectrum usage rights associated with the FCC License to be relinquished in the Auction (as such term is defined in the Option Agreement), subject to the terms set forth in the Bid Management Agreement.

6.10 Use of Proceeds. The proceeds of each Subsidy Payment shall be applied by SMCCCD to fund the operation of the Station

6.11 Access to Facilities. At LPN's request, SMCCCD shall from time to time give to, or cause to be given to, LPN full access during normal business hours to the Station (including its main studio and transmission equipment); *provided, however*, that all such access shall be scheduled in a manner reasonably acceptable to SMCCCD.

SECTION 7. NEGATIVE COVENANTS

SMCCCD covenants and agrees that, until the earlier of (i) the payment in full of all of the Reimbursement Obligations (other than any unasserted claims for expense reimbursement or indemnification under subsections 10.2 or 10.3) and (ii) the consummation of any Auction Sale, Call Option Sale or Put Option Sale (as such terms are defined in the Option Agreement), SMCCCD shall perform all covenants in this Section 7.

7.1 Indebtedness. Other than in the ordinary course of business, SMCCCD shall not, directly or indirectly, create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to, any Indebtedness (other than any Reimbursement Obligations) in respect of the Station.

7.2 Liens and Related Matters. SMCCCD shall not, directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to any property or asset of SMCCCD used in the operation of the Station, whether now owned or hereafter acquired, or any income therefrom, or file or permit the filing of, or permit to remain in effect, any financing statement or other similar notice of any Lien with respect to any such property, asset, income or profits under the UCC or under any similar recording or notice statute, except Permitted Encumbrances.

7.3 Restriction on Fundamental Changes; Asset Sales. SMCCCD shall not convey, sell, lease or sub-lease (as lessor or sublessor), transfer or otherwise dispose of, in one transaction or a series of transactions, substantially all of its business, property or assets (including its notes or receivables, whether newly issued or outstanding) used in connection with the operation of the Station, whether now owned or hereafter acquired, other than in connection with the transactions contemplated by the Option Agreement. SMCCCD shall not grant or agree to grant any Person (other than LPN) any interest in any proceeds from any conveyance, surrender or other disposition of any FCC License.

SECTION 8. NEGATIVE COVENANTS DURING A TRIGGERING EVENT OR AFTER THE FUNDING TERMINATION DATE.

SMCCCD covenants and agrees that, during the occurrence and continuation of a Triggering Event or at any time after the Funding Termination Date and until the earlier of (i) the payment in full of all of the Reimbursement Obligations (other than any unasserted claims for expense reimbursement or indemnification under subsections 10.2 or 10.3) and (ii) the consummation of any Auction Sale, Call Option Sale or Put Option Sale (as such terms are defined in the Option Agreement), SMCCCD shall perform all covenants in this Section 8.

8.1 Indebtedness. Other in the ordinary course of business, SMCCCD shall not, directly or indirectly, create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to, any other Indebtedness (other than any Reimbursement Obligations).

8.2 Liens and Related Matters. Except in the ordinary course of business, SMCCCD shall not, directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to any property or asset of any kind (including any document or instrument in respect of goods or accounts receivable) of SMCCCD, whether now owned or hereafter acquired, or any income or profits therefrom, or file or permit the filing of, or permit to remain in effect, any financing statement or other similar notice of any Lien with respect to any such property, asset, income or profits under the UCC or under any similar recording or notice statute, except Permitted Encumbrances.

8.3 Restriction on Fundamental Changes; Asset Sales. Other than in the ordinary course of business, SMCCCD shall not convey, sell, lease or sub-lease (as lessor or sublessor), transfer or otherwise dispose of, in one transaction or a series of transactions, all or any part of its business, property or assets (including its notes or receivables, whether newly issued or outstanding) used in connection with the Station, whether now owned or hereafter acquired.

SECTION 9. REIMBURSEMENT OBLIGATIONS

9.1 Triggering Events. To the extent that the occurrence of any of the following conditions or events ("**Triggering Events**") shall result in a Material Adverse Effect:

A. Default in Other Agreements. Breach or default by SMCCCD with respect to any material term of (a) one or more items of Indebtedness or (b) any loan agreement, mortgage, indenture or other agreement relating to such item(s) of Indebtedness, if the effect of such breach or default is to cause, or to permit the holder or holders of that Indebtedness (or a trustee on behalf of such holder or holders) to cause, that Indebtedness to become or be declared due and payable prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be (upon the giving or receiving of notice, lapse of time, both, or otherwise); or

B. Breach of Certain Covenants. Failure of SMCCCD to perform or comply with any term or condition contained in subsection 6.2, 6.8, 6.10 or Section 7 or 8 of this Agreement; or

C. Breach of Warranty. Any representation, warranty, certification or other statement made by SMCCCD in any Funding Document shall be false in any material respect on the date as of which made; or

D. Other Defaults Under Funding Documents. SMCCCD shall default in the performance of or compliance with any term contained in (a) this Agreement or any of the Collateral Documents, other than any such term referred to in any other provision of this subsection 9.1, and such default shall not have been remedied or waived within 10 Business Days after the earlier of (i) an Officer of SMCCCD becoming aware of such default or (ii) receipt by SMCCCD of notice from LPN of such default or (b) the Option Agreement or the Bid Management Agreement; or

E. Involuntary Appointment of Receiver, etc. A decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over SMCCCD, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of SMCCCD for all or a substantial part of its property; or

a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of SMCCCD, and any such event described in this subsection 9.1E shall continue for 60 days unless dismissed, bonded or discharged; or

F. Voluntary Bankruptcy; Appointment of Receiver, etc.

(i) SMCCCD shall have an order for relief entered with respect to it or commence a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or SMCCCD shall make any assignment for the benefit of creditors; or

(ii) SMCCCD shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or the Governing Body (or any committee thereof) of SMCCCD shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to in clause (i) above or this clause (ii); or

G. Judgments and Attachments. Any money judgment, writ or warrant of attachment or similar process related to the Station shall be entered or filed against SMCCCD or any of the Station's assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of 30 days (or in any event later than five days prior to the date of any proposed sale thereunder); or

H. Invalidity of Funding Documents; Failure of Security; Repudiation of Reimbursement Obligations. At any time after the execution and delivery thereof, (i) any Funding Document or any provision thereof, for any reason other than the satisfaction in full of all Reimbursement Obligations, shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void, (ii) LPN shall not have or shall cease to have a valid and perfected First Priority Lien in the Proceeds purported to be covered by the Collateral Documents, in each case for any reason other than the failure of LPN to take any action within its control, or (iii) SMCCCD shall contest the validity or enforceability of any Funding Document or any provision thereof in writing or deny in writing that it has any further liability under any Funding Document to which it is a party or any provision thereof; or

I. FCC License.

(i) The FCC License shall have been cancelled, terminated, suspended, revoked, denied renewal, materially adversely modified, or otherwise ceased to be in full force and effect; or

(ii) The FCC, any Communications Regulatory Authority or any other Government Authority commences an action or proceeding that could lead to the cancellation, termination, suspension, revocation, non-renewal, or material adverse modification of any FCC License; or

J. Reimbursement Event. A Reimbursement Event (as such term is defined in the Option Agreement) shall have occurred:

THEN (i) upon the occurrence of any Triggering Event described in subsection 9.1E or 9.1F, each of the Subsidy Payments made on or prior to such date, shall automatically become immediately due and payable, without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by SMCCCD, and the obligation of LPN to make any Subsidy Payment shall thereupon terminate; and (ii) upon the occurrence and during the continuation of any other Triggering Event, LPN may, by written notice to SMCCCD, either, in LPN's sole discretion (x) declare all or any portion of the Subsidy Payments made on or prior to such date, to be, and the same shall forthwith become, immediately due and payable, and the obligation of LPN to make any Subsidy Payment hereunder shall thereupon terminate, or (y) exercise the Sale Call Option upon the terms and conditions set forth in the Option Agreement, in which case LPN shall be deemed to have waived its right to repayment of the Reimbursement Obligations with respect to such Triggering Event and the obligation of LPN to make Subsidy Payments shall continue; provided, however, if the occurrence of a Triggering Event is the result of SMCCCD's willful breach of any obligations under this Agreement or the other Funding Documents (a "**Willful Breach**"), then, without limiting any other rights or remedies of LPN, SMCCCD's repayment of Subsidy Payments pursuant to clause (i) or (ii) shall be made together with interest thereon at a rate equal to 8% per annum. For the avoidance of doubt, failure by SMCCCD to discharge its obligations pursuant to the Sale Call Option granted under the Option Agreement will constitute a Willful Breach hereunder.

9.2 Application of Proceeds and Payments during a Triggering Event; Payments Generally; Calculation of Interest.

A. Application of Proceeds and Payments during a Triggering Event. Upon the occurrence and during the continuation of a Triggering Event, all payments made by SMCCCD to LPN in respect of any Reimbursement Obligation shall be applied to the payment of interest (if interest is payable) before application to principal and shall be applied to reduce such principal pro rata. In the event of a Willful Breach, LPN shall also be entitled to compensation, reimbursement and indemnification under any Funding Document, and to the payment of all costs and expenses paid or incurred by LPN in connection with the Funding Documents.

B. Payments Generally. All payments by SMCCCD of Reimbursement Obligations shall be made in Dollars in same day funds, free of any restriction or condition, and delivered to LPN not later than noon San Francisco time on the date due in the LPN Account; funds received by LPN after that time on such due date shall be deemed to have been paid by SMCCCD on the next succeeding Business Day. Whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of the payment of interest hereunder.

C. Calculation of Interest. Interest payable under subsection 9.1 of this Agreement, if any, shall be computed on the basis of a 365-day year, in each case for the actual number of days elapsed in the period during which it accrues. In computing interest on any Subsidy Payment, the date of the making of such Subsidy Payment shall be included, and the date of payment of such Subsidy Payment shall be excluded; provided that if a Subsidy Payment is repaid on the same day on which it is made, one day's interest shall be paid on that Subsidy Payment. In no event shall the rate of interest payable by SMCCCD with respect to any Subsidy Payment exceed the maximum rate of interest permitted to be charged under applicable law (the "**Maximum Rate**"). If LPN shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the unpaid principal of the Subsidy Payment or, if it exceeds such unpaid principal, refunded to SMCCCD.

SECTION 10. MISCELLANEOUS

10.1 Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and the successors and assigns of LPN. SMCCCD's rights or obligations hereunder or any interest therein may not be assigned or delegated by SMCCCD without the prior written consent of LPN (and any attempted assignment or transfer by SMCCCD without such consent shall be null and void). LPN may assign its rights hereunder and delegate its duties hereunder, in whole or in part, to one or more Affiliates without the consent of SMCCCD. Any such assignment or delegation authorized pursuant to this subsection 10.1 shall be pursuant to a written agreement, which shall be delivered to SMCCCD. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, the Affiliates of each of LPN and Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

10.2 Expenses. If either party to this Agreement shall bring any action for relief against the other, declaratory or otherwise, arising out of this Agreement, the losing party shall pay to the prevailing party reasonable attorneys' fees and costs incurred in bringing such suit and/or enforcing any judgment granted therein. Any judgment or order entered in such action shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing such judgment.

10.3 Indemnity.

A. Indemnification by SMCCCD. SMCCCD shall defend and save LPN and its respective officers, directors, employees, agents, representatives and permitted assigns (each, an "**LPN Indemnified Party**"), forever harmless from and against, and shall reimburse each LPN Indemnified Party for, any and all liabilities, obligations, deficiencies, demands, claims, suits, actions, or causes of action, assessments, losses, costs and expenses (including reasonable attorneys' fees) ("**Losses**"), sustained or incurred by an LPN Indemnified Party, relating to, resulting from, arising out of, or otherwise by virtue of, any of the following:

- (i) any breach of a representation or warranty made by SMCCCD this Agreement; and
- (ii) any breach of a covenant or other agreement made by SMCCCD in this Agreement.

B. Indemnification by LPN. LPN shall defend and save SMCCCD, its subsidiaries, and their respective officers, directors, employees, agents, representatives and permitted assigns (each, an "**SMCCCD Indemnified Party**" and together with the LPN Indemnified Parties, ("**Indemnitees**"), forever harmless from and against, and shall reimburse each SMCCCD Indemnified Party for, any and all Losses sustained or incurred by an SMCCCD Indemnified Party, relating to, resulting from, arising out of, or otherwise by virtue of, any of the following:

- (i) any breach of a representation or warranty made by LPN in this Agreement; and
- (ii) any breach of a covenant or other agreement made by LPN in this Agreement.

10.4 Amendments and Waivers; Termination. This Agreement shall not be amended, modified or waived in whole or in part except in writing signed by an officer of the party to be bound by such amendment, modification or waiver. This Agreement may be terminated (a) by mutual written agreement of SMCCCD and LPN, (b) by LPN upon the occurrence of any Triggering Event described in subsection 9.1, or (c) by SMCCCD without penalty to it in the event that LPN fails to make any Subsidy Payment within 34 days of its due date.

10.5 Independence of Covenants. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Triggering Event or Potential Triggering Event if such action is taken or condition exists.

10.6 Notices; Effectiveness of Signatures. Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given shall be in writing and may be personally served, or sent by United States mail, return receipt requested, or courier service that provides proof of delivery, and shall be deemed to have been given when delivered. For the purposes hereof, the address of each party hereto shall be as set forth under such party's name on the signature pages hereof or such other address as shall be designated by such Person in a written notice delivered to the other parties hereto. Funding Documents and notices under the Funding Documents may be transmitted and/or signed by signatures delivered in 'PDF' format by electronic mail with affirmative return acknowledgement of receipt by the recipient. The effectiveness of any such documents and signatures shall, subject to applicable law, have the same force and effect as an original copy with manual signatures and shall be binding on SMCCCD and LPN. Either party may also require that any such documents and signature be confirmed by a manually-signed copy thereof; provided, however, that the failure to request or deliver any such manually-signed copy shall not affect the effectiveness of any document or signature.

10.7 Survival of Representations, Warranties and Agreements. All representations, warranties and agreements made herein shall survive the execution and delivery of this Agreement and the making of the Subsidy Payments hereunder. Notwithstanding anything in this Agreement or implied by law to the contrary, the agreements of SMCCCD set forth in subsections 10.3 and 10.12 shall survive the payment of the Subsidy Payments and the termination of this Agreement.

10.8 Failure or Indulgence Not Waiver; Remedies Cumulative. No failure or delay on the part of LPN or SMCCCD in the exercise of any power, right or privilege hereunder or under any other Funding Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. All rights and remedies existing under this Agreement and the other Funding Documents are cumulative to, and not exclusive of, any rights or remedies otherwise available.

10.9 Payments Set Aside. To the extent that SMCCCD makes a payment or payments to LPN or LPN exercises its rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, any other state or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

10.10 Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby, although the parties shall strive to interpret the remaining provisions and obligations so as to give effect to their mutual economic goals.

10.11 Damage Waiver. To the extent permitted by law, neither SMCCCD nor LPN shall assert, and hereby waive, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with or as a result of this Agreement, any other Funding Document, any transaction contemplated by the Funding Documents, any Subsidy Payment or the use of proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with the Funding Documents or the transactions contemplated thereby.

10.12 Applicable Law. THIS AGREEMENT AND THE OTHER FUNDING DOCUMENTS (EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN ANY SUCH FUNDING DOCUMENT), AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF CALIFORNIA (INCLUDING SECTION 1646.5 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA), WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THAT WOULD REQUIRE APPLICATION OF ANOTHER LAW.

10.13 Construction of Agreement; Nature of Relationship. Each of the parties hereto acknowledges that (i) it has been represented by counsel in the negotiation and documentation of the terms of this Agreement, (ii) it has had full and fair opportunity to review and revise the terms of this Agreement, and (iii) this Agreement has been drafted jointly by both of the parties hereto. Accordingly, each of the parties hereto acknowledges and agrees that the terms of this Agreement shall not be construed against or in favor of the other party. The parties agree that in connection with all aspects of the transactions contemplated hereby or by the other Funding Documents and any communications in connection therewith, SMCCCD, on the one hand, and LPN, on the other hand, will have a business relationship that does not create, by implication or otherwise, any fiduciary duty on the part of either party or any of their respective Affiliates, and no such duty will be deemed to have arisen in connection with any such transactions or communications.

10.14 Consent to Jurisdiction and Service of Process. ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST SMCCCD OR LPN ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER FUNDING DOCUMENT, OR ANY OBLIGATIONS HEREUNDER AND THEREUNDER, MAY BE BROUGHT IN A STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE OF CALIFORNIA, COUNTY AND CITY OF SAN MATEO. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH OF SMCCCD AND LPN, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY (I) ACCEPTS GENERALLY AND UNCONDITIONALLY THE EXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS; (II) WAIVES ANY DEFENSE OF *FORUM NON CONVENIENS*; (III) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO SMCCCD OR LPN, AS APPLICABLE, AT SUCH PARTY'S ADDRESS PROVIDED IN ACCORDANCE WITH SUBSECTION 10.6; (IV) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (III) ABOVE IS SUFFICIENT TO CONFER

PERSONAL JURISDICTION OVER ITSELF IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; (IV) AGREES THAT THE OTHER PARTY RETAINS THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW; AND (V) AGREES THAT THE PROVISIONS OF THIS SUBSECTION 10.14 RELATING TO JURISDICTION AND VENUE SHALL BE BINDING AND ENFORCEABLE TO THE FULLEST EXTENT PERMISSIBLE UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 410.40 OR OTHERWISE.

10.15 Confidentiality; Public Disclosure. A Party receiving Confidential Information ("Receiving Party") from the other party ("Disclosing Party") will refrain from directly or indirectly disclosing the Disclosing Party's Confidential Information and may not use the Disclosing Party's Confidential Information for any purpose whatsoever, except for the purpose for which it was provided and as contemplated and authorized by this Agreement or the other Funding Documents. The term "Confidential Information" shall mean for purposes of this Agreement and the other Funding Documents all non-public information and material, whether disclosed or made available in writing, electronically, orally, visually or otherwise, regarding the business of the Disclosing Party and third parties who have furnished confidential, non-public information to the Disclosing Party and all other information or material disclosed to the Receiving Party by the Disclosing Party or its Affiliates or representatives that should be understood by a reasonable business person to be confidential. Notwithstanding the foregoing, the Receiving Party may use and disclose to its Affiliates, directors, officers, employees and agents, including accountants, legal counsel, investment bankers, underwriters and other advisors (collectively "Representatives") the Confidential Information of the Disclosing Party as reasonably necessary to enable the Receiving Party to fulfill its obligations and realize its benefits under this Agreement and the other Funding Documents, *provided, however*, (a) that the Receiving Party shall make all commercially reasonable efforts to ensure that each such Representative acknowledges and complies with this Section 25 as if such Representative were a party to this Section, and (b) that the Receiving Party shall remain responsible and liable for such Representative's compliance with this Section. The Receiving Party shall use the same degree of care to protect the Confidential Information of the Disclosing Party from unauthorized use or disclosure as it uses to protect its own information of a similar nature, but in no event less than reasonable care. Notwithstanding the foregoing, the Parties acknowledge that SMCCCD is subject to the open records requirements of California law. SMCCCD shall not disclose any Confidential Information that may lawfully be withheld under that law. To the maximum extent permitted by law, SMCCCD will provide LPN with notice of any intended public disclosure of this Agreement or any other Funding Document and provide LPN with the opportunity to consult with SMCCCD and redact such agreements to the extent permitted by law prior to their public disclosure.

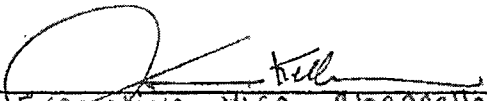
10.16 Counterparts; Effectiveness. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in counterparts, each of which when so executed and delivered shall be deemed an original, but both such counterparts together shall constitute but one and the same instrument; signature pages may be detached from separate counterparts and attached to a single counterpart so that both signature pages are physically attached to the same document. This Agreement shall become effective upon (i) the execution of a counterpart hereof by each of the parties hereto and (ii) the satisfaction or waiver of the other conditions set forth in subsection 3.1.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

SMCCCD:

**SAN MATEO COUNTY COMMUNITY COLLEGE
DISTRICT**

By: 
Title: Executive Vice Chancellor

Notice Address:

Executive Vice Chancellor
San Mateo County Community College District
3401 CSM Drive
San Mateo, CA 94402
Phone: 650-358-6790
Email: roecksj@smccd.edu

With a copy to:

Lawrence M. Miller
Schwartz, Woods & Miller
1233 20th Street, NW, Suite 610
Washington, D.C. 20036-7322
Phone: (202) 833-1700
Email: miller@swmlaw.com

With a copy to:

Jan Roecks
San Mateo County Community College District
3401 CSM Drive
San Mateo, CA 94402
Phone: 650-358-6790
Email: roecksj@smccd.edu

Eugene Whitlock
400 County Center, 6th Floor
Redwood City, CA 94063

LPN:

LOCUSPOINT NETWORKS, LLC

By: *William deKay*
Title: CEO

Notice Address:

LocusPoint Networks, LLC
Pleasanton Corporate Commons
6200 Stoneridge Mall Road, Suite 300
Pleasanton, CA 94588
Attn: William deKay
Facsimile No.: (925) 399-6001
Email: bill@locuspointnetworks.com

With a copy to:

O'Melveny & Myers LLP
2765 Sand Hill Road
Menlo Park, California 94025
Attn: David Makarechian, Esq.
Facsimile No.: (650) 473-2601
Email: dmakarechian@omm.com

EXHIBITS

- I FORM OF COMPLIANCE CERTIFICATE
- II FORM OF SECURITY AGREEMENT

EXHIBIT I

[FORM OF] COMPLIANCE CERTIFICATE

COMPLIANCE CERTIFICATE

THE UNDERSIGNED HEREBY CERTIFIES THAT:

(1) I am the [Title] of San Mateo County Community College District, a California community college district ("SMCCCD");

(2) I have reviewed the terms of that certain Funding Agreement dated as of May 16, 2013, as amended, supplemented or otherwise modified to the date hereof (said Funding Agreement, as so amended, supplemented or otherwise modified, being the "**Funding Agreement**", the terms defined therein and not otherwise defined in this Certificate being used in this Certificate as therein defined), by and among SMCCCD and LocusPoint Networks, LLC, a Delaware limited liability company ("LPN"), and the terms of the other Funding Documents, and I have made, or have caused to be made under our supervision, a review in reasonable detail of the transactions and condition of SMCCCD during the accounting period covered by the attached financial statements;

(3) As of the date hereof:

(i) The representations and warranties contained in the Funding Agreement and in the other Funding Documents are true, correct and complete in all material respects to the same extent as though made on and as of the date hereof, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties were true, correct and complete in all material respects on and as of such earlier date; provided, that, if a representation and warranty is qualified as to materiality, the materiality qualifier set forth above shall be disregarded with respect to such representation and warranty for purposes of this condition;

(ii) No event has occurred or would result from the making of such Subsidy Payment that would constitute a Triggering Event or a Potential Triggering Event;

(iii) SMCCCD has performed in all material respects all agreements and satisfied all conditions which the Funding Agreement and each other Funding Document provides shall be performed or satisfied by it on or before the date hereof;

(iv) To the knowledge of SMCCCD, no order, judgment or decree of any arbitrator or Government Authority purports to enjoin or restrain LPN from making the Subsidy Payment to be made by it on the date hereof;

(v) No FCC License has been forfeited or materially impaired for any reason, including as a result of or in connection with any Funding Document or the transactions contemplated hereby or thereby; and

(vi) No Material Adverse Effect has occurred.

The foregoing certifications are made and delivered this ____ day of _____, ____ pursuant to subsection 3.2A of the Funding Agreement.

**SAN MATEO COUNTY COMMUNITY COLLEGE
DISTRICT**

By: _____
Title: _____

EXHIBIT II

FORM OF SECURITY AGREEMENT

This **SECURITY AGREEMENT** (this "**Agreement**") is dated as of May 16, 2013 and entered into by and between **SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT**, a California community college district ("**SMCCCD**"), and **LOCUSPOINT NETWORKS, LLC**, a Delaware limited liability SMCCCD ("**LPN**").

PRELIMINARY STATEMENTS

A. Pursuant to the Funding Agreement dated as of May 16, 2013 (said Funding Agreement, as it may hereafter be amended, restated, supplemented or otherwise modified from time to time, being the "**Funding Agreement**"; the terms defined therein and not otherwise defined in Section 20 or elsewhere herein being used herein as therein defined), by and between SMCCCD and LPN, LPN has made certain commitments, subject to the terms and conditions set forth in the Funding Agreement, to make funds available to SMCCCD.

B. In consideration of the funds provided under the Funding Agreement, SMCCCD has entered into the Option Agreement and the Bid Management Agreement with LPN, and it is desired that the obligations of SMCCCD under the Option Agreement be secured hereunder.

C. It is a condition precedent to the funding by LPN of the LPN Payment under the Funding Agreement that SMCCCD shall have granted the security interests and undertaken the obligations contemplated by this Agreement.

NOW, THEREFORE, in consideration of the agreements set forth herein and in the Funding Agreement and in order to induce LPN to fund the LPN Payment under the Funding Agreement and to enter into the other Funding Documents, SMCCCD hereby agrees with LPN as follows:

SECTION 1. Grant of Security. SMCCCD hereby assigns to LPN, and hereby grants to LPN a security interest in, all of SMCCCD's right, title and interest in and to (a) the LPN Share, (b) the Proceeds Account (which is more specifically described on Schedule 1 annexed hereto) and all Money representing the LPN Share from time to time on deposit in the Proceeds Account, and (c) all "proceeds" (as defined in the UCC) with respect to any of the items described in the foregoing clauses (a) and (b), in each case whether now or hereafter existing (collectively, the "**Collateral**").

SECTION 2. Security for Obligations. This Agreement secures, and the Collateral is collateral security for, the prompt payment or performance in full when due of all Secured Obligations of SMCCCD. "**Secured Obligations**" means the obligations of SMCCCD to pay the LPN Share to LPN in accordance with the terms of the Option Agreement, the Funding Agreement and the other Funding Documents.

SECTION 3: Representations and Warranties. SMCCCD represents and warrants as follows: (a) except as expressly permitted by the Funding Agreement, SMCCCD will at all times own its interests in the Collateral free and clear of any Lien and no effective financing statement or other instrument similar in effect covering all or any part of the Collateral is on file in any filing or recording office; (b) the security interests in the Collateral granted to LPN hereunder constitute valid security interests in the Collateral, securing the payment of the Secured Obligations; and (c) upon (i) the filing of UCC financing statements naming SMCCCD as "debtor", naming LPN as "secured party" and describing the Collateral in the filing offices with respect to SMCCCD set forth on Schedule 2 annexed hereto, and (ii) the

execution and delivery to LPN of an agreement providing for control by LPN of the Proceeds Account, the security interests in the Collateral granted to LPN will constitute perfected security interests therein prior to all other Liens, and all filings and other actions necessary or desirable to perfect and protect such security interests have been, or promptly after the Effective Date will be, duly made or taken.

SECTION 4. Further Assurances. SMCCCD agrees that from time to time, at the expense of SMCCCD, SMCCCD will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that LPN may request, in order to perfect and protect any security interest granted or purported to be granted hereby or to enable LPN to exercise and enforce its rights and remedies hereunder with respect to any Collateral.

SECTION 5. Certain Covenants of SMCCCD. SMCCCD shall: (a) not use or permit any Collateral to be used unlawfully or in violation of any provision of this Agreement or any applicable statute, regulation or ordinance or any policy of insurance covering the Collateral; and (b) use the Collateral only in accordance with the terms and conditions of the Option Agreement and the other Funding Documents.

SECTION 6. LPN Appointed Attorney-in-Fact. SMCCCD hereby irrevocably appoints LPN as SMCCCD's attorney-in-fact, with full authority in the place and stead of SMCCCD and in the name of SMCCCD, LPN or otherwise, from time to time upon any breach of or default under the Option Agreement or any other Funding Document, in LPN's discretion to take any action and to execute any instrument that LPN may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation to: (a) ask for, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral; and (b) file any claims or take any action or institute any proceedings that LPN may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce or protect the rights of LPN with respect to any of the Collateral.

SECTION 7. LPN May Perform. If SMCCCD fails to perform any agreement contained herein, LPN may itself perform, or cause performance of, such agreement, and the expenses of LPN incurred in connection therewith shall be payable by SMCCCD under Section 10.

SECTION 8. Remedies. Upon any breach of or default under the Option Agreement or any other Funding Document by SMCCCD, LPN may exercise in respect of the Collateral, in addition to all other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party on default under the UCC (whether or not the UCC applies to the affected Collateral). LPN may also, upon any breach of or default under the Option Agreement or any other Funding Document by SMCCCD, provide instructions directing the disposition of funds representing the LPN Share in the Proceeds Account. SMCCCD further agrees that a breach of any of the covenants contained in this Section 8 will cause irreparable injury to LPN, that LPN has no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section shall be specifically enforceable against SMCCCD, and SMCCCD hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no default has occurred giving rise to the Secured Obligations becoming due and payable prior to their stated maturities.

SECTION 9. Application of Proceeds. Except as expressly provided elsewhere in this Agreement, all proceeds received by LPN in respect of any sale of, collection from, or other realization upon all or any part of the Collateral shall be applied in accordance with the terms of the Funding Agreement.

SECTION 10. Indemnity and Expenses. SMCCCD agrees to indemnify LPN from and against any and all claims, losses and liabilities in any way relating to, growing out of or resulting from this Agreement and the transactions contemplated hereby (including, without limitation, enforcement of this

Agreement), except to the extent such claims, losses or liabilities result solely from LPN's gross negligence or willful misconduct as finally determined by a court of competent jurisdiction. LPN agrees to indemnify SMCCCD from and against any and all claims, losses and liabilities in any way relating to, growing out of or resulting from this Agreement and the transactions contemplated hereby (including, without limitation, enforcement of this Agreement), except to the extent such claims, losses or liabilities result solely from SMCCCD's gross negligence or willful misconduct as finally determined by a court of competent jurisdiction. If either party to this Agreement shall bring any action for relief against the other, declaratory or otherwise, arising out of this Agreement, the losing party shall pay to the prevailing party reasonable attorneys' fees and costs incurred in bringing such suit and/or enforcing any judgment granted therein. Any judgment or order entered in such action shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing such judgment. The obligations of each party in this Section 10 shall survive the termination of this Agreement and the discharge of the obligations under this Agreement and the other Funding Documents.

SECTION 11. Continuing Security Interest; Successors and Assigns; Termination and Release.

This Agreement shall create a continuing security interest in the Collateral and shall (i) remain in full force and effect until the payment in full of the Secured Obligations (other than unasserted claims for indemnification or expense reimbursement), (ii) be binding upon SMCCCD and its respective successors and assigns, and (iii) inure, together with the rights and remedies of LPN hereunder, to the benefit of LPN and its successors, transferees and assigns. Without limiting the generality of the foregoing clause (iii), LPN may assign or otherwise transfer its rights and obligations under any Funding Document in accordance with the terms of such Funding Agreement, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to LPN herein or otherwise. Upon the payment in full of all Secured Obligations (other than unasserted claims for indemnification or expense reimbursement), the security interest granted hereby shall terminate and all rights to the Collateral shall revert to the applicable SMCCCD. Upon any such termination LPN will, at SMCCCD' expense, execute and deliver to SMCCCD such documents as SMCCCD shall reasonably request to evidence such termination.

SECTION 12. Amendments; Etc. No amendment, modification, termination or waiver of any provision of this Agreement, and no consent to any departure by SMCCCD therefrom, shall in any event be effective unless the same shall be in writing and signed by LPN and, in the case of any such amendment or modification, by SMCCCD. Any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

SECTION 13. Notices. Any notice or other communication herein required or permitted to be given shall be in writing and may be personally served or sent by electronic mail, telefacsimile or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service, upon receipt of electronic mail, telefacsimile, or three Business Days after depositing it in the United States mail with postage prepaid and properly addressed; provided that notices to LPN shall not be effective until received. For the purposes hereof, the address of each party hereto shall be as provided in subsection 10.6 of the Funding Agreement or as set forth under such party's name on the signature pages hereof or such other address as shall be designated by such party in a written notice delivered to the other parties hereto.

SECTION 14. Failure or Indulgence Not Waiver; Remedies Cumulative. No failure or delay on the part of LPN in the exercise of any power, right or privilege hereunder shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude any other or further exercise thereof or of any other power, right or privilege. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

SECTION 15. Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

SECTION 16. Headings. Section and subsection headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

SECTION 17. Governing Law; Rules of Construction. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF CALIFORNIA (INCLUDING SECTION 1646.5 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA), WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THAT WOULD REQUIRE APPLICATION OF ANOTHER LAW, EXCEPT TO THE EXTENT THAT THE UCC PROVIDES THAT THE PERFECTION OF THE SECURITY INTEREST HEREUNDER, OR REMEDIES HEREUNDER, IN RESPECT OF ANY PARTICULAR COLLATERAL ARE GOVERNED BY THE LAWS OF A JURISDICTION OTHER THAN THE STATE OF CALIFORNIA, IN WHICH CASE THE LAWS OF SUCH JURISDICTION SHALL GOVERN WITH RESPECT TO THE PERFECTION OF THE SECURITY INTEREST IN, OR THE REMEDIES WITH RESPECT TO, SUCH PARTICULAR COLLATERAL. The rules of construction set forth in subsection 1.3 of the Funding Agreement shall be applicable to this Agreement *mutatis mutandis*.

SECTION 18. Consent to Jurisdiction and Service of Process. ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST SMCCCD OR LPN ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER FUNDING DOCUMENT, OR ANY OBLIGATIONS HEREUNDER AND THEREUNDER, MAY BE BROUGHT IN A STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE OF CALIFORNIA, COUNTY AND CITY OF SAN MATEO. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH OF SMCCCD AND LPN, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY (I) ACCEPTS GENERALLY AND UNCONDITIONALLY THE EXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS; (II) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (III) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO SMCCCD OR LPN, AS APPLICABLE, AT SUCH PARTY'S ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 13; (IV) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (III) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER ITSELF IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; (V) AGREES THAT THE OTHER PARTY RETAINS THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW; AND (VI) AGREES THAT THE PROVISIONS OF THIS SECTION 18 RELATING TO JURISDICTION AND VENUE SHALL BE BINDING AND ENFORCEABLE TO THE FULLEST EXTENT PERMISSIBLE UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 410.40 OR OTHERWISE.

SECTION 19. Counterparts. This Agreement may be executed in one or more counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document.

SECTION 20. Definitions. Each capitalized term utilized in this Agreement that is not defined in the Funding Agreement or in this Agreement, but that is defined in the UCC, including the categories of Collateral listed in Section 1 hereof, shall have the meaning set forth in Articles 1, 8 or 9 of the UCC. In addition, the following terms used in this Agreement shall have the following meanings:

“**Collateral**” has the meaning set forth in Section 1.

“**Funding Agreement**” has the meaning set forth in the Preliminary Statements of this Agreement.

“**LPN Share**” has the meaning assigned to it in the Option Agreement.

“**Secured Obligations**” has the meaning set forth in Section 2 hereof.

“**UCC**” means the Uniform Commercial Code, as it exists on the date of this Agreement or as it may hereafter be amended, in the State of California.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, SMCCCD and LPN have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

**SAN MATEO COMMUNITY COLLEGE
DISTRICT**

By: _____
Name: _____
Title: _____

Notice Address:

Executive Vice Chancellor
San Mateo County Community College District
3401 CSM Drive
San Mateo, CA 94402
Phone: 650-358-6790
Email: roecksj@smccd.edu

With a copy to:

Lawrence M. Miller
Schwartz, Woods & Miller
1233 20th Street, NW, Suite 610
Washington, D.C. 20036-7322
Phone: 202-833-1700
Email: miller@swmlaw.com

With a copy to:

Jan Roecks
San Mateo County Community College District
3401 CSM Drive
San Mateo, CA 94402
Phone: 650-358-6790
Email: roecksj@smccd.edu

LOCUSPOINT NETWORKS, LLC

By: _____
Name: _____
Title: _____

Notice Address:

LocusPoint Networks, LLC
Pleasanton Corporate Commons
6200 Stoneridge Mall Road, Suite 300
Pleasanton, CA 94588
Attn: William deKay
Facsimile No.:
Email: bill@locuspointnetworks.com

With a copy to:

O'Melveny & Myers LLP
2765 Sand Hill Road
Menlo Park, CA 94025
Attn: David Makarechian, Esq.
Facsimile No.: 650-473-2601
Email: dmakarechian@omm.com

**SCHEDULE 1
TO
SECURITY AGREEMENT**

Proceeds Account

<u>Type of Account</u>	<u>Depository Bank</u>	<u>Address of Depository Bank</u>	<u>Account Number</u>
Deposit Account	Union Bank of California	350 California Street, 10 th Floor San Francisco, CA 94104	A/C# 7020024903 ABA# 122000496

**SCHEDULE 2
TO
SECURITY AGREEMENT**

Filing Offices

California Secretary of State

SCHEDULES

4.1D FCC LICENSE AND MATERIAL GOVERNMENTAL AUTHORIZATIONS

(Attached)

4.5 LEASED REAL PROPERTY

Lease at Sutro.

4.8 MATERIAL CONTRACTS

American Public Television (Program provider)

NETA (Program provider)

EPS (Program provider)

Myers Information Systems (software services for programming)

AT&T (Studio to transmitter link)

Eaton Corp (UPS service contract)

United Comfort Solutions (Air conditioning service - Sutro)



United States of America
FEDERAL COMMUNICATIONS COMMISSION
TELEVISION BROADCAST STATION LICENSE

Authorizing Official:

Official Mailing Address:

SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT
1700 W HILLSDALE BLVD
SAN MATEO CA 94402

Kevin R. Harding
Associate Chief
Video Division
Media Bureau

Facility Id: 58912

Analog TSID: 410

Digital TSID: 411

Call Sign: KCSM-TV

License File Number: BLEDT-20091124AHY

This license covers permit no.: BPEDT-20080825AAV

Grant Date: April 04, 2011

This license expires 3:00 a.m.
local time, December 01, 2014.

Subject to the provisions of the Communications Act of 1934, subsequent acts and treaties, and all regulations heretofore or hereafter made by this Commission, and further subject to the conditions set forth in this license, the licensee is hereby authorized to use and operate the radio transmitting apparatus herein described.

This license is issued on the licensee's representation that the statements contained in licensee's application are true and that the undertakings therein contained so far as they are consistent herewith, will be carried out in good faith. The licensee shall, during the term of this license, render such broadcasting service as will serve the public interest, convenience, or necessity to the full extent of the privileges herein conferred.

This license shall not vest in the licensee any right to operate the station nor any right in the use of the frequency designated in the license beyond the term hereof, nor in any other manner than authorized herein. Neither the license nor the right granted hereunder shall be assigned or otherwise transferred in violation of the Communications Act of 1934. This license is subject to the right of use or control by the Government of the United States conferred by Section 606 of the Communications Act of 1934.

Call sign: KCSM-TV

License No.: BLEDT-20091124AHY

Name of Licensee: SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT

Station Location: CA-SAN MATEO

Frequency (MHz): 644 - 650

Channel: 43

Hours of Operation: Unlimited

Transmitter: Type Accepted. See Sections 73.1660, 73.1665 and 73.1670 of the Commission's Rules.

Antenna type: (directional or non-directional): Directional

Description: DIE, TUM-C5SP-14/60H-2-T-R

Beam Tilt: 0.75 Degrees Electrical

Major lobe directions 54 126
(degrees true):

Antenna Coordinates: North Latitude: 37 deg 45 min 19 sec

 West Longitude: 122 deg 27 min 06 sec

Transmitter output power: 17.5 kW
 12.44 DBK

Maximum effective radiated power (Average): 500 kW
 26.99 DBK

Height of radiation center above ground: 288.3 Meters

Height of radiation center above mean sea level: 542.5 Meters

Height of radiation center above average terrain: 511.4 Meters

Antenna structure registration number: 1001289

Overall height of antenna structure above ground (including obstruction lighting if any) see the registration for this antenna structure.

*** END OF AUTHORIZATION ***

EXHIBIT C

EXECUTION VERSION

PUT/CALL OPTION AGREEMENT

This PUT/CALL OPTION AGREEMENT (the "Agreement") is entered into as of May 16, 2013 by and among San Mateo County Community College District, a California Community College District ("SMCCCD") and LocusPoint Networks LLC, a Delaware limited liability company ("LPN").

RECITALS

A. SMCCCD operates full-power noncommercial educational television station KCSM-TV (RF Channel 43), San Mateo, California (FCC Facility ID No. 58912) (the "Station") and holds all Federal Communications Commission ("FCC") licenses and authorizations necessary for the current operations of the Station (collectively, the "FCC Licenses").

B. SMCCCD has determined that it will participate in the reverse auction contemplated as part of the broadcast incentive auction to be conducted by the FCC under Section 6403 of the Middle Class Tax Relief and Job Creation Act of 2012 (the "Auction"), as the rules governing the Auction may provide, and, in the event that SMCCCD is not successful in relinquishing the Station's spectrum usage rights in the Auction, enter into a transaction for the assignment of the FCC Licenses and transfer of the Station's assets (a "Sale") to a qualified buyer (a "Buyer").

C. SMCCCD wishes to obtain financial support in funding the operating expenses of the Station, and LPN has expressed an interest in sharing with SMCCCD the proceeds that may result from (i) the Station's relinquishment of spectrum usage rights through participation in the Auction (the "Gross Auction Proceeds") or (ii) a Sale to a Buyer (the "Gross Sale Proceeds") in the event that SMCCCD is not successful in relinquishing the Station's spectrum usage rights in the Auction.

D. In connection with this Agreement, SMCCCD and LPN have entered into that certain Funding Agreement dated as of the date hereof (the "Funding Agreement") pursuant to which, upon the terms and conditions set forth therein, LPN has agreed to provide to SMCCCD funding in the amount of Three Million Six Hundred Thousand Dollars (\$3,600,000), to be paid in installments of Two Hundred Twenty-Five Thousand Dollars (\$225,000) (the "Subsidy Payments"), for the operating expenses of the Station as it is currently operated in compliance with the rules, regulations and policies of the FCC (the "FCC Rules").

E. The parties have agreed that in consideration of, among other things, LPN providing such funding to SMCCCD pursuant to the Funding Agreement, LPN will have the right to share a specified percentage of the Gross Auction Proceeds or Gross Sale Proceeds, as the case may be.

F. In furtherance of these objectives, the parties wish to grant the Options (as defined below) contained in this Agreement on the terms and subject to the conditions set forth herein.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, and other good and valuable consideration (the receipt and sufficiency of which the parties hereto acknowledge), the parties hereto agree as follows:

1. LPN Share. The LPN Share shall be equal to thirty-six and one half percent (36.5%) multiplied by either (i) the Gross Auction Proceeds or (ii) the Gross Sale Proceeds, as applicable (the "**LPN Share**"), and shall be subject to the following adjustments:

a. If an Auction Sale or Sale occurs before the last of the Subsidy Payments is made by LPN, then the aggregate dollar amount of any remaining Subsidy Payments that have not been paid to SMCCCD will be credited to SMCCCD as a reduction to the LPN Share.

b. In the event that LPN fails to make any Subsidy Payment within three days of its due date (as described in Section 2 of the Funding Agreement), the LPN Share shall be reduced by an amount equal to 2.28125% multiplied by the Gross Auction Proceeds or Gross Sale Proceeds, as applicable, for each such failure, e.g., from 36.5% to 34.21875% in the case of one late payment. In the event that LPN fails to make any Subsidy Payment within 34 days of its due date (as described in Section 2 of the Funding Agreement), SMCCCD shall have the right to terminate this Agreement, except if LPN's non-payment is due to a material breach by SMCCCD of a Funding Document.

c. The LPN Share shall be increased by the amount of any application fees or other out-of-pocket fees or expenses advanced by LPN to the FCC on SMCCCD's behalf pursuant to Section 2.2.13 of the Bid Management Agreement by and between SMCCCD and LPN dated as of the date hereof (the "Bid Management Agreement").

2. Auction Call Option.

a. SMCCCD hereby grants to LPN, upon all of the terms and subject to all of the conditions set forth herein, an option (the "Auction Call Option") to receive the LPN Share of the proceeds derived from the relinquishment of the Station's spectrum usage rights in connection with the Auction (an "Auction Sale"). LPN may exercise its Auction Call Option at any time until thirty (30) days following the deposit of the Gross Auction Proceeds into the Proceeds Account (as defined in the Funding Agreement) by delivering to SMCCCD a written notice (an "Auction Call Notice"), which Auction Call Notice shall state that LPN thereby exercises the Auction Call Option, without condition or qualification, to cause the LPN Share to be distributed to LPN in accordance with this Agreement. Following receipt of an Auction Call Notice from LPN, (i) if the FCC allows the LPN Share to be paid directly to LPN, SMCCCD will make any and all necessary filings with, and requests to, the FCC to cause such direct payment to be made to LPN using information to be provided by LPN to SMCCCD in writing, and (ii) if applicable rules of the FCC do not permit the LPN Share to be paid directly to LPN, SMCCCD shall cause the Gross Auction Proceeds to be deposited into the Proceeds Account and shall, within five (5) calendar days thereafter, take all necessary actions to cause the LPN Share to be paid to LPN by wire transfer of immediately available funds. In the event that SMCCCD receives the Gross Auction Proceeds prior to receiving an Auction Call Notice, then SMCCCD will deposit the LPN Share into the Proceeds Account and shall pay the LPN Share to LPN as soon as practicable thereafter.

b. If the date specified by the FCC as the deadline for the filing of applications to participate in the Auction has not occurred by the three-year anniversary of the date of this Agreement, LPN and SMCCCD will negotiate in good faith for a period of not more than ninety (90) days (which such period the parties may extend by their mutual agreement) regarding whether additional Subsidy Payments should be made beyond the date on which LPN is scheduled to make the last Subsidy Payment (the "Subsidy Termination Date") and, if so, to what extent the LPN Share should be adjusted. In the event that the parties do not agree to terms under which additional Subsidy Payments would be made or the LPN Share adjusted, LPN shall have the ability to offer to make up to four (4) additional quarterly Subsidy Payments to SMCCCD (each an "Extension Subsidy Payment") over the ensuing one (1) year. SMCCCD shall have the right to accept or decline LPN's offer to make Extension Subsidy Payments. If SMCCCD accepts LPN's offer of Extension Subsidy Payments, then for each Extension Subsidy Payment made by LPN, the LPN Share shall be increased by an amount equal to 2.28125% multiplied by the Gross Auction Proceeds or Gross Sale Proceeds, as applicable, e.g., from 36.5% to 38.78125% in the case of one Extension Subsidy Payment. If SMCCCD declines LPN's offer of Extension Subsidy Payments, SMCCCD shall be responsible for financing continuing operations of the Station and the LPN Share shall not change. In either event, the Subsidy Termination Date will be extended for the period to which the offered Extension Subsidy Payments apply.

3. Sale Call Option.

a. SMCCCD hereby grants to LPN, upon all of the terms and subject to all of the conditions set forth herein, an option (the "Sale Call Option") to cause SMCCCD to participate in a Sale (a "Call Option Sale") to a Buyer identified by LPN that is acceptable to SMCCCD (it being understood that SMCCCD's approval of such Buyer will be withheld only if SMCCCD demonstrates to LPN's reasonable satisfaction that Buyer would not be qualified to hold the FCC Licenses); *provided*, that if LPN's identification of a Buyer is not permitted by FCC Rules and/or California law, then SMCCCD shall identify a Buyer in accordance with SMCCCD's obligations under California law. LPN will be entitled to receive the LPN Share of the proceeds derived from a Call Option Sale upon the consummation of such a transaction.

b. The Sale Call Option will be exercisable for a period (the "Sale Call Option Period") ending on the Option Termination Date and beginning on the earlier to occur of the following: (i) the date that SMCCCD withdraws from the Auction or is determined to be unqualified to bid, or if it neither withdraws or is determined to be unqualified, the date that the FCC provides notice of the results of the Auction and such notice does not indicate that the FCC has accepted SMCCCD's bid for relinquishment of the spectrum usage rights associated with the FCC Licenses; or (ii) the date on which a Triggering Event (as defined in Section 9.1 of the Funding Agreement) occurs, except for a Triggering Event under Sections 9.1E or 9.1F of the Funding Agreement; or (iii) thirty (30) days after the Subsidy Termination Date if the FCC has not by that date announced a date by which applications to participate in the Auction must be filed.

c. LPN may exercise its Sale Call Option during the Sale Call Option Period by delivering to SMCCCD a written notice (a "Sale Call Notice"), which Sale Call Notice shall state that LPN thereby exercises the Sale Call Option, without condition or qualification, to cause SMCCCD to proceed with a Call Option Sale in accordance with this Agreement.

4. Put Option.

a. LPN hereby grants to SMCCCD, upon all of the terms and subject to all of the conditions set forth herein, an option (the "Put Option," and, together with the Auction Call Option and the Sale Call Option, the "Options") to participate in a Sale (a "Put Option Sale") to a Buyer identified by SMCCCD. LPN will be entitled to receive the LPN Share of the proceeds derived from a Put Option Sale upon the consummation of such a transaction.

b. The Put Option shall become exercisable for a period (the "Put Option Period") ending on the Option Termination Date and beginning thirty (30) days following the date on which the Sale Call Option becomes exercisable.

c. Notwithstanding anything to the contrary in Section 4(b) of this Agreement, the Put Option shall not be exercisable in the event that:

i. SMCCCD is in material breach of this Agreement, the Funding Agreement or the Bid Management Agreement or the Collateral Documents (as defined in the Funding Agreement) (collectively, the "Funding Documents");

ii. a Triggering Event has occurred;

iii. there has been any change, effect, event, occurrence or state of facts that is, or is reasonably expected to be, materially adverse to the business, properties, financial condition or results of operations of the Station, taken as a whole, or an event or occurrence which would reasonably be expected to be materially adverse to the business, properties, financial condition or results of operations of SMCCCD in connection with the Station; or

iv. a Put Option Sale shall be prohibited by any applicable law, ruling, court order, statute, regulation, or judgment, whether foreign, federal, state or local.

d. SMCCCD may exercise the Put Option during the Put Option Notice Period by delivering to LPN a written notice (a "Put Notice"), which Put Notice shall state that SMCCCD intends to exercise the Put Option, without condition or qualification, to allow SMCCCD to proceed with a Put Option Sale in accordance with this Agreement. The Put Notice shall identify the Buyer.

5. Termination of Options. If not previously exercised, the Options will automatically terminate at 11:59 p.m., on December 31, 2025 (the "Option Termination Date").

6. Mechanics of a Sale. In the event that SMCCCD participates in the Auction and an Auction Sale does not occur, the parties will work together in good faith to develop a strategy to maximize the value of the Station and each shall use commercially reasonable efforts to identify a suitable Buyer and consummate a Sale. Following receipt of a valid Sale Call Notice by SMCCCD or a valid Put Notice by LPN, subject to the terms and conditions of this Agreement, SMCCCD and LPN shall proceed in good faith to negotiate, prepare and execute a definitive agreement with the Buyer for the Sale (the "Sale Agreement"). LPN will have the following rights with respect to such Sale to the maximum extent permitted under applicable law:

a. LPN will have the right to participate in, all negotiations involving SMCCCD and the Buyer

b. LPN will have the right to consult with SMCCCD regarding all regulatory processes associated with the "repacking" of KCSM to a new channel assignment if, at the conclusion of the Auction, the FCC has not accepted SMCCCD's bid for relinquishment of the spectrum usage rights associated with the FCC Licenses. Such consultations will include involvement with SMCCCD in (i) discussions with the FCC regarding the channel reassignment process, (ii) processes for obtaining the maximum reimbursement of expenses associated with repacking, and (iii) preparing all filings and applications as may be required by the FCC timely to complete the repacking process;

c. all terms and conditions of the Sale Agreement will be subject to LPN's prior consultation;

d. upon consummation of the Sale, LPN will receive the LPN Share of the proceeds by wire transfer of immediately available funds;

e. the Sale Agreement will include a general release of and covenant not to sue LPN and all of its affiliates with respect to any known or unknown claims against LPN or any of its officers, directors, members or shareholders in connection with, arising out of or related to any of the Funding Documents, the Sale Agreement or the transactions contemplated thereby; and

f. the Sale shall take place by a date that is no later than 30 days after the FCC's consent of the transfer of the FCC Licenses becomes a Final Order. For purposes of this Agreement, the term "Final Order" means action by the FCC consenting to an assignment of the FCC Licenses or a transfer of control of the Station, provided that such consent shall not have been reversed, stayed, enjoined, set aside, annulled, or suspended, and with respect to which no timely request for stay, petition for rehearing, petition for reconsideration, application for review, or notice of appeal is pending, and as to which the times for filing any such request, petition, application, notice, or appeal, or for reconsideration or review by the FCC on its own motion, shall have expired.

7. Reimbursement Event. If at any time during the Put Option Period SMCCCD is not using its commercially reasonable efforts to identify a Buyer and consummate a Sale and instead chooses to pursue alternative funding for the continued operation of the Station (a "Reimbursement Event"), then LPN may deliver to SMCCCD written notice that a Reimbursement Event has occurred and such Reimbursement Event will be a Triggering Event under Section 9.1 of the Funding Agreement.

8. Representations and Warranties of SMCCCD. As an inducement to LPN to enter into this Agreement, SMCCCD makes the following representations and warranties to LPN, each of which is true and correct on the date hereof:

a. Funding Agreement Representations and Warranties. The representations and warranties of SMCCCD contained in Section 4 of the Funding Agreement are incorporated herein by reference as if the same were set forth fully herein.

b. Organization, Standing and Authority. SMCCCD is a California Community College District duly organized, validly existing and in good standing under the laws of the State of California. SMCCCD has all requisite power and authority (i) to own, lease and use its assets as presently owned, leased and used, (ii) to conduct its business and operations as presently conducted, (iii) to execute and deliver this Agreement, and (iv) to perform and comply with all of the terms, covenants, and conditions to be performed and complied with by it hereunder;

c. Authorization and Binding Obligation. The execution, delivery and performance by SMCCCD of this Agreement, and the consummation of the transactions contemplated hereby, have been duly authorized by all necessary action of the governing Board, and SMCCCD is not aware of any further actions or approvals necessary for the consummation of any of the transactions contemplated hereby other than a sale pursuant to the Sale Call Option or the Put Option, which would require approval of the SMCCCD Board. This Agreement has been duly executed and delivered by SMCCCD. This Agreement constitutes the legal, valid and binding obligation of SMCCCD, enforceable against SMCCCD in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity.

d. Absence of Conflicting Agreements and Required Consents. The execution, delivery and performance by SMCCCD of this Agreement (i) does not require the consent of any third party (except for the consent of the FCC for a Sale); (ii) will not conflict with any provision of the laws governing SMCCCD; (iii) will not conflict with, result in a breach of, or constitute a default under, any applicable law, judgment, order, rule or regulation of any court or governmental unit by which SMCCCD may be bound, provided that FCC consent for a Sale has been obtained; and (iv) will not conflict with, constitute grounds for termination of, result in a breach of, or constitute a default under, any agreement, instrument, license or permit to which SMCCCD is a party or by which SMCCCD may be bound. Without in any way limiting the foregoing, SMCCCD warrants that it has complied with any requirements of California and local law with which a community college district must comply to sell a broadcast property SMCCCD will defend itself and LPN against any charge of noncompliance by SMCCCD with such requirements and, in the event of a final decision by a competent authority that SMCCCD has failed to comply with such requirements, will take all reasonable steps to come into compliance with such requirements.

e. No Interference. There is currently no legal or regulatory proceeding, including interventions by the public or any Government Authority pending, or to the knowledge of SMCCCD threatened, that could reasonably be expected to materially frustrate, impair or limit the consummation of any of the transactions contemplated by or under the Funding Documents (including the participation by SMCCCD in, or the assignment of the FCC Licenses or surrender of the spectrum usage rights associated with the FCC Licenses pursuant to, the Auction, a Call Option Sale or Put Option Sale) or otherwise to have a Material Adverse Effect (as defined in the Funding Agreement).

9. Representations and Warranties of LPN. As an inducement to SMCCCD to enter into this Agreement, LPN makes the following representations and warranties to SMCCCD, each of which is true and correct on the date hereof:

a. Funding Agreement Representations and Warranties. The representations and warranties of LPN contained in Section 5 of the Funding Agreement are incorporated herein by reference as if the same were set forth fully herein

b. Organization, Standing and Authority. LPN is a limited liability corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, with all requisite power under its organization documents to enter into and perform this Agreement and the transactions contemplated hereby.

c. Authorization and Binding Obligation. The execution, delivery, and performance by LPN of this Agreement, and the consummation by LPN of the transactions contemplated hereby, have been duly authorized by all necessary corporate action. This Agreement has been duly executed and delivered by LPN. This Agreement constitutes the legal, valid, and binding obligation of LPN, enforceable against LPN in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting the rights of creditors generally or by general principles of equity.

d. Absence of Conflicting Agreements. The execution, delivery, and performance by LPN of this Agreement (with or without the giving of notice, the lapse of time, or both) (i) do not require the consent of any third party (other than the consent of the FCC for a sale); (ii) will not conflict with, result in a breach of, or constitute a default under, any applicable law, judgment, order, rule or regulation of any court or governmental unit to which LPN is a party or by which LPN is bound, provided that FCC consent for a Sale has been obtained; and (iii) will not conflict with, constitute grounds for termination of, result in a breach of, constitute a default under, or accelerate or permit the acceleration of any performance required by, the terms of, any agreement, instrument, license, or permit to which LPN is a party or by which LPN may be bound.

10. Covenants.

a. The covenants of SMCCCD contained in Section 6 and Section 7 of the Funding Agreement are incorporated herein by reference as if the same were set forth fully herein.

b. SMCCCD covenants that the Station will participate in the Auction and SMCCCD and LPN both covenant that they will perform their respective obligations under the Funding Documents.

c. From the date of this Agreement until the earlier to occur of an Auction Sale, Call Option Sale or Put Option Sale, SMCCCD will:

i. maintain, and take all actions necessary to maintain, the FCC Licenses in full force and effect and in good standing in accordance with their terms and in compliance in all material respects with the Communications Act of 1934, as amended, and the FCC Rules, including but not limited to the timely filing and prosecuting of any necessary modification or renewal applications of the FCC Licenses or other submissions to the FCC.

ii. operate the Station, and perform all of its obligations with respect thereto, in the ordinary course of business consistent with past practices, and maintain full and complete control over the Station's personnel, programming and finances.

iii. not solicit, initiate or hold discussions with any other party with respect to any transaction similar to the transactions contemplated by this Agreement involving the FCC Licenses or the Station or with respect to any sale of the Station, except as permitted in the Funding Documents.

d. From the date of this Agreement until the earlier to occur of an Auction Sale, Call Option Sale or Put Option Sale, each party covenants that it will take no action that could reasonably be expected to impede, interfere with, delay, postpone or materially adversely affect the transactions contemplated by this Agreement or the likelihood of such transactions being consummated.

11. Specific Performance. The parties acknowledge that the Options granted in this Agreement are unique and not readily obtainable on the open market and that, in the event that either party fails to perform its obligations pursuant to this Agreement, money damages alone will be inadequate to compensate the damaged party for its injury. The parties agree that in the event of a material breach by a party, the non-breaching party shall be entitled, in lieu of terminating this Agreement, to specific performance of its terms. If any action is brought by one party against the other to enforce this Agreement, the other party shall waive the defense that there is an adequate remedy at law, and the prevailing party in litigation shall be entitled to receive from the non-prevailing party all court costs and reasonable attorney's fees incurred by the prevailing party in enforcing or defending its rights under this provision.

12. Indemnification.

a. Indemnification by SMCCCD. SMCCCD shall defend and save LPN and its respective officers, directors, employees, agents, representatives and permitted assigns (each, an "LPN Indemnified Party"), forever harmless from and against, and shall reimburse each LPN Indemnified Party for, any and all liabilities, obligations, deficiencies, demands, claims, suits, actions, or causes of action, assessments, losses, costs and expenses (including reasonable attorneys' fees) ("Losses"), sustained or incurred by an LPN Indemnified Party, relating to, resulting from, arising out of, or otherwise by virtue of, any of the following:

i. any breach of a representation or warranty made by SMCCCD in Section 8 of this Agreement; and

ii. any breach of a covenant or other agreement made by in this Agreement.

b. Indemnification by LPN. LPN shall defend and save SMCCCD and its respective officers, directors, employees, agents, representatives and permitted assigns (each, an "SMCCCD Indemnified Party"), forever harmless from and against, and shall reimburse each SMCCCD Indemnified Party for, any and all Losses sustained or incurred by an SMCCCD Indemnified Party, relating to, resulting from, arising out of, or otherwise by virtue of, any of the following:

i. any material breach of a representation or warranty made by LPN in Section 9 of this Agreement; and

ii. any material breach of a covenant or other agreement made by LPN in this Agreement.

13. Dispute Resolution. Any disputes between LPN and SMCCCD arising out of or relating to this Agreement shall be subject, *mutatis mutandis*, to the dispute resolution provisions set forth in the Funding Agreement.

14. Modification. This Agreement shall not be amended, modified or waived in whole or in part except in writing signed by an officer of the party to be bound by such amendment, modification or waiver.

15. Waiver of Breach. A waiver by one party of any breach or default by the other party shall not be construed as a waiver of any other breach or default whether or not similar and whether or not occurring before or after the subject breach.

16. Notices. All notices and other communications required or permitted hereunder shall be in writing, shall be deemed duly given upon actual receipt, and shall be delivered (a) in person, (b) by a generally recognized overnight courier service which provides written acknowledgment by the addressee of receipt, or (c) by email or other generally accepted means of electronic transmission, with affirmative evidence of receipt, addressed as set forth in Exhibit A or to such other addresses as may be specified by like notice to the other parties and acknowledged as received by such addressee(s).

17. Assignments. LPN may assign its rights hereunder and delegate its duties hereunder, in whole or in part, to one or more affiliates. As used herein, an "affiliate" of a person means any person that directly or indirectly controls, is controlled by, or is under common control with the person in question. However, in that event LPN will remain responsible for performance. Any such assignment or delegation authorized pursuant to this Section 17 shall be pursuant to a written agreement, which shall be delivered to SMCCCD. Except as otherwise expressly provided herein, neither this Agreement nor any rights, duties or obligations hereunder may be assigned or delegated by any of the parties, in whole or in part, whether voluntarily, by operation of law or otherwise. Any attempted assignment or delegation in violation of this prohibition shall be null and void. Subject to the foregoing, all of the terms and provisions hereof shall be binding upon, and inure to the benefit of, the successors and permitted assigns of the parties. Nothing contained herein, express or implied, is intended to confer on any person other than the parties or their respective successors and permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

18. Effect of Default. Notwithstanding anything to the contrary in this Agreement, a party may not exercise any Option or other right under this Agreement if such party is in material default under this Agreement or any other Funding Document.

19. Governing Law. This Agreement and the legal relations among the parties shall be governed by and construed in accordance with the laws of the State of California applicable to contracts between California residents made and performed in that State, without regard to conflict of laws principles.

20. Further Assurances. In a timely fashion, each party shall execute and deliver such further instruments, documents or assurances, and take such further action, as shall be required to carry out the purposes and intent of this Agreement.

21. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original instrument and both of which, when taken together, shall constitute one and the same agreement, and any such counterpart may be delivered by facsimile or other electronic transmission (including .pdf file) with affirmative evidence of receipt..

22. Severability. If any provision of this Agreement, or the application thereof, shall for any reason or to any extent be invalid or unenforceable, then the remainder of this Agreement and application of such provision to other persons or circumstances shall continue in full force and effect and in no way be affected, impaired or invalidated; *provided*, that the aggregate of all such provisions found to be invalid or unenforceable does not materially affect the benefits and obligations of the parties of the Agreement taken as a whole. In the event of any such invalidity, the parties hereto agree that (a) such invalidity shall be as minimal as possible so as to make such provision(s) valid and enforceable and (b) they shall attempt in good faith to replace any such invalid provisions with a valid and enforceable provision that effects as nearly as possible the original intent of the parties hereto.

23. Headings. The subject headings of the sections and sub-sections of this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of the terms and conditions of this Agreement.

24. Conflicts. In the event of any conflict or inconsistency between this Agreement and the Funding Agreement, the terms of the Funding Agreement shall control.

25. Public Disclosure. To the maximum extent permitted by law, SMCCCD will provide LPN with notice of any intended public disclosure of this Agreement or any other Funding Document and provide LPN with the opportunity to consult with SMCCCD and redact such agreements to the extent permitted by law prior to their public disclosure.

[Signatures page follows]

IN WITNESS WHEREOF, the parties have caused this Put/Call Option Agreement to be signed by their duly authorized representatives as of the date first set forth above.

LOCUSPOINT NETWORKS LLC

By: William de Fay
Its: CEO

SAN MATEO COUNTY COMMUNITY
COLLEGE DISTRICT

By: [Signature]
Its: Executive Vice Chancellor

EXHIBIT A

NOTICES

If to SMCCCD:

Executive Vice Chancellor
San Mateo County Community College District
3401 CSM Drive
San Mateo, CA 94402
Phone: 650-358-6790
Email: roecksj@smccd.edu

With a copy to:

Lawrence M. Miller
Schwartz, Woods & Miller
1233 20th Street, NW, Suite 610
Washington, D.C. 20036-7322
Phone: (202) 833-1700
Email: miller@swmlaw.com

With a copy to:

Jan Roecks
San Mateo County Community College District
3401 CSM Drive
San Mateo, CA 94402
Phone: 650-358-6790
Email: roecksj@smccd.edu

Eugene Whitlock
400 County Center, 6th Floor
Redwood City, CA 94063

If to LPN:

LocusPoint Networks, LLC
Pleasanton Corporate Commons
6200 Stoneridge Mall Road, Suite 300
Pleasanton, CA 94588
Attn: William deKay
Facsimile No.: (925) 399-6001
Email: bill@locuspointnetworks.com

With a copy to:

O'Melveny & Myers LLP
2765 Sand Hill Road
Menlo Park, California 94025
Attn: David Makarechian, Esq.
Facsimile No.: (650) 473-2601
Email: dmakarechian@omm.com

EXHIBIT D

AMENDMENT TO BID MANAGEMENT AGREEMENT

This Amendment ("Amendment") is entered into on December 8, 2015 ("Amendment Effective Date") by San Mateo County Community College District (the "District"), a community college district of the State of California, and LocusPoint Networks, LLC ("LPN"), a Delaware limited liability company, to amend the Bid Management Agreement between the District and LPN, dated as of May 16, 2013 ("Agreement"). Capitalized terms that are used but not defined herein shall have the meaning given to such terms in the Agreement.

WHEREAS, pursuant to the Agreement, LPN agreed to provide certain specified services to the District in connection with the Auction. Following the execution of the Agreement, the FCC issued a new regulation, 47 C.F.R. § 1.2205, and related guidance (collectively, "Rule") prohibiting communications between Auction participants and certain of their affiliates, on the one hand, and "covered television licensees" and "forward auction applicants" (as such terms are defined in the FCC's Rules), on the other hand, regarding Auction bids and bidding strategies. This prohibition is applicable from the deadline for submitting applications to participate in the reverse auction portion of the Auction ("Application Deadline") until the results of the Auction are announced by public notice ("Quiet Period"). As a result of the promulgation of the Rule and pursuant to Section 2.8 and 8.1 of the Agreement, the Parties hereby amend the Agreement to modify LPN's obligations during the Quiet Period to comply with the Rule.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

1. The Agreement shall be amended as of the Amendment Effective Date as follows:
 - a. Section 2.2.2 of the Agreement shall be deleted and replaced with the following: "Before the Quiet Period, timely prepare for review and submission by the District of the application for KCSM to participate fully in the Auction;"
 - b. Section 2.2.3 of the Agreement shall be deleted and replaced with the following: "[Reserved.]"
 - c. Section 2.2.4 of the Agreement shall be deleted and replaced with the following: "Prior to the Application Deadline, establish a general bidding strategy for maximizing the value in the Auction of the spectrum usage rights associated with the License;
 - d. Section 2.2.5 of the Agreement shall be deleted and replaced with the following: "Train and supervise the qualified personnel that the District appoints to act as its authorized bidders in the Auction to assure their satisfactory performance of the duties associated with authorized bidders in the Auction;"
 - e. Section 2.2.7 of the Agreement shall be deleted and replaced with the following: "[Reserved.]"
 - f. Section 2.2.10 of the Agreement shall be deleted and replaced with the following: "Prepare, on behalf of the District, responses to any requests for information which the FCC may make prior to or following, but not during, the Quiet Period;"
 - g. Section 2.2.11 of the Agreement shall be deleted and replaced with the following: "Participate with the District in any meetings or telephone conferences with the FCC as the FCC may request prior to or following, but not during, the Quiet Period;"

- h. Section 2.2.12 of the Agreement shall be deleted and replaced with the following:
“Communicate with the FCC on behalf of the District, prior to or following, but not during, the Quiet Period, regarding logistical matters relevant to participation in the Auction and the mechanics of obtaining any proceeds resulting from the District’s participation in the Auction;”
 - i. Section 2.2.13 of the Agreement shall be deleted and replaced with the following: “If, at the conclusion of the Auction, the FCC accepts the bid for relinquishment of the spectrum usage rights associated with the License, prepare for the District all filings and applications as may be required to be filed after the Quiet Period to complete the process of relinquishment;”
 - j. The last sentence of Section 2.3 of the Agreement shall be deleted and replaced with the following: “In implementing the strategy developed for the Auction, the District shall cause its authorized bidder to refrain from submitting a bid that would cause such an event to occur.”
 - k. Two new final sentences shall be added to the end of Section 2.4 as follows: “The Parties agree and acknowledge that LPN has engaged PricewaterhouseCoopers Advisory Services LLC (“PwC”) to serve as LPN’s subcontractor and agent and that PwC may provide to the District on behalf of LPN certain of the services set forth in Section 2.2 during the Quiet Period to the extent that PwC can do so in compliance with the FCC’s Rules and LPN cannot. To facilitate this arrangement, the District has executed a Letter of Authorization in the form attached to this Agreement as Attachment A.”
 - l. Section 2.6.3 of the Agreement shall be deleted and replaced with the following:
“Designate prior to the start of the Quiet Period up to three individuals who shall serve as the District’s authorized bidders during the Auction and who (a) are authorized to place bids on behalf of the District during the Auction, (b) will be trained by LPN to be familiar with the FCC’s Rules applicable to the Auction, as well as with Auction processes and procedures, and (c) will consult in every round during the Auction with PwC in a prompt and timely manner;”
 - m. The executed Attachment A attached to this Amendment shall be attached to the Agreement as Attachment A to the Agreement.
2. Entire Agreement; Counterparts. This Amendment and the Agreement which it amends constitutes the entire understanding between the Parties and supersedes any prior understandings respecting the subject matter hereof. This Amendment may be signed in any number of counterparts, each of which shall be an original for all purposes, but all which taken together shall constitute only one Amendment. The Parties agree that transmission of this Amendment with facsimile or electronic “pdf” signatures shall bind the Parties in the same manner as if the Party’s original signatures had been delivered.

[remainder of this page intentionally left blank – signature page follows]

SIGNATURE PAGE – AMENDMENT TO BID MANAGEMENT AGREEMENT

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the date and year first above written.

SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT

By: Kathy Blackwood

Name: Kathy Blackwood
Title: ~~Executive Vice Chancellor~~

LOCUSPOINT NETWORKS, LLC

By: William de Ky
Name: William de Ky
Title: ceo

ATTACHMENT A

LETTER OF AUTHORIZATION

Pursuant to Section 2.4 of the Bid Management Agreement (the "Agreement"), dated as of May 16, 2013, between LocusPoint Networks, LLC ("LPN") and San Mateo County Community College District (the "District"), PricewaterhouseCoopers Advisory Services LLC ("PwC") has been designated by LPN as LPN's subcontractor and agent in carrying out certain of LPN's obligations under the Agreement.

In particular, between the deadline for submitting applications to participate in the broadcast incentive auction and the announcement of the auction results (the FCC's "quiet period"), LPN will be unable to communicate with the District regarding bids or bid strategy. Therefore, LPN has designated PwC to be responsible for performing LPN's obligations under Section 2.2 of the Agreement and various of its subsections, including monitoring and assisting the District with its participation of Station KCSM-TV (RF Channel 43), San Mateo, California (FCC Facility ID No. 58912) (the "Station") in the auction. ~~PwC is not assuming any additional~~ duties or obligations directly to the District in connection with these services.

PwC will dedicate a member of its staff (and one alternate to act in that member's place if he or she is unable to do so) to act in LPN's place under the Agreement during the "quiet period". To the extent the District and the District's designated authorized bidders intend to take, or take, actions that are not consistent with the District's obligations under the Agreement and any related bidding strategy, PwC will notify the previously designated contact representatives of the District.

By acknowledging the designation of PwC as subcontractor and agent of LPN pursuant to Section 2.4 of the Agreement, the District agrees to cooperate with PwC in accordance with Section 2.6 of the Agreement as it performs its engagement by LPN to help ensure compliance with the FCC's rules pertaining to the Auction under the Agreement.

Acknowledged this 8th day of December, 2015.

SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT

By: 

Name: Kathy Blackwood

Title: Executive Vice Chancellor

EXHIBIT E

FAXED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TADAHIRO KABURAKI (S.B. #311823)
O'MELVENY & MYERS LLP
Two Embarcadero Center
28th Floor
San Francisco, CA 94111
Telephone: (415) 984-8700
Facsimile: (415) 984-8701

B. ANDREW BEDNARK (*pro hac vice* forthcoming)
O'MELVENY & MYERS LLP
7 Times Square
New York, NY 10036
Telephone: (212) 326-2000
Facsimile: (212) 326-2061

Attorneys for Plaintiffs
LocusPoint Networks, LLC and
LocusPoint II KCSM, LLC

ENDORSED FILED
SAN MATEO COUNTY

APR 10 2017

Clerk of the Superior Court
By JORDAN MAXWELL
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

UNLIMITED JURISDICTION

17CIV01550

LOCUSPOINT NETWORKS, LLC,
a Delaware Limited Liability Company;
LOCUSPOINT II KCSM, LLC,
a Delaware Limited Liability Company,

Plaintiffs,

v.

SAN MATEO COUNTY COMMUNITY
COLLEGE DISTRICT,

Defendant.

Case No.

**COMPLAINT FOR
BREACH OF CONTRACT**

DEMAND FOR JURY TRIAL

1 LocusPoint Networks, LLC and LocusPoint II KCSM, LLC ("LPN"), by and through
2 their undersigned counsel, for their complaint against the San Mateo County Community College
3 District ("the District"), respectfully allege, upon knowledge as to their own actions and
4 information and belief as to others' actions, as follows:

5 **NATURE OF THE ACTION**

6 1. This is an action for damages to recover what LPN would have received but for the
7 District's breaches of its three May 2013 contracts with LPN.

8 2. Those contracts involved the District's broadcast television station, KCSM-TV
9 ("KCSM"), which the District had operated at a significant loss for years. By 2011, the District
10 had decided to explore selling the station outright rather than continuing to fund KCSM's losses,
11 going as far as to issue a Request for Proposal (RFP) that solicited six acquisition proposals.

12 3. Then, in February 2012, a federal law was passed that required the Federal
13 Communications Commission ("FCC") to hold a special auction in which holders of FCC
14 broadcast licenses, such as the District, would have the unique opportunity to sell the spectrum-
15 usage rights—essentially, the right to use the public airwaves—associated with their licenses at
16 prices brokered by the FCC in a multiple-round auction (the "Auction"). The relinquished
17 spectrum would be repackaged by the FCC and auctioned to wireless-communications providers,
18 making licenses covering large metropolitan areas—such as KCSM's—especially attractive. But
19 the critical details of the Auction, such as timing, design, station valuation, and spectrum supply
20 and demand, were yet to be determined.

21 4. Sensing the opportunity, the District decided not to accept any of the six
22 acquisition proposals, and chose instead to seek an arrangement under which it could obtain from
23 a third-party the funding KCSM needed to continue to operate until the Auction, whenever it
24 might occur. Outside funding was crucial because the District had "approximately \$1 million in
25 losses every year at KCSM-TV," and the District's Board of Trustees (the "Board") was "clear
26 that the District cannot afford to continue this financial subsidization," as reported in the May 15,
27 2013 Board meeting minutes.

28 5. The District solicited four bids with a second RFP, but only two bids to fund

1 KCSM. On May 15, 2013, the Board selected LPN's bid, which provided up to \$3.6 million in
2 funding to KCSM, on the recommendation of the District's staff that "the proposed agreement
3 with LocusPoint Networks is the best and most valuable option for the District."

4 6. The value to the District of LPN's commitment went far beyond the dollar
5 amount—LPN's funds would also buy the District the necessary time until the Auction since it
6 was unwilling to continue to fund KCSM on its own.

7 7. The Auction opportunity enabled the District to negotiate favorable funding terms
8 and transfer to LPN the risks associated with the Auction. LPN agreed to forgo any guaranteed
9 repayment or investment return in exchange for an option to receive 36.5% of the District's
10 proceeds from the Auction. Thus, the District assumed no risk to its ongoing operating budget.
11 By contrast, at a time of great uncertainty regarding the Auction—the principal trade association
12 for broadcasters had opposed it and the FCC had not yet adopted a framework or rules to govern
13 it—LPN risked its entire investment in exchange for a share of the District's Auction proceeds. If
14 the Auction were delayed or did not occur, or if the FCC's offer fell below an agreed minimum
15 price, the District would get to keep LPN's funding while LPN could get nothing. Operating a
16 noncommercial, nonprofit television station at a significant loss, the District could not have
17 obtained such advantageous financing terms from any traditional source such as a bank—to the
18 extent it could have obtained any financing at all.

19 8. Because LPN staked its investment on the Auction rather than on a guaranteed
20 repayment or return from the District, LPN sought assurances from the District about the
21 District's participation in the Auction. For example, (i) the Funding Agreement required the
22 District to "take all actions necessary to cause the spectrum usage rights associated with the FCC
23 License to be relinquished in the Auction"; (ii) the Bid Management Agreement obligated the
24 District to "[t]ake all such other actions as may be reasonably required or as LPN . . . may request
25 in order for the District to successfully participate in the Auction and relinquish the spectrum
26 usage rights associated with the License at a price that is at or above the [\$3,000,000] Minimum
27 Bid Amount"; and (iii) the Put/Call Option Agreement bound the District to its obligations under
28

1 the other Agreements.¹ The District expressly agreed to reimburse LPN's funding payments upon
2 a breach of these obligations (among other events).

3 9. The District and LPN began their preparations for the Auction in December 2015.
4 Those preparations included establishing procedures that the District's three authorized bidders—
5 the only individuals allowed under FCC rules to place bids on a licensee's behalf—would follow
6 to ensure KCSM's successful participation in the Auction. Foremost among those procedures
7 was confirming and documenting each of the District's bids as they were submitted in light of the
8 FCC's repeated warnings that the failure to submit a bid would result in being dropped from the
9 Auction.

10 10. The District filed an application with the FCC to participate in the Auction on
11 January 6, 2016, and active bidding began on May 31, 2016. Following agreed procedures, the
12 District successfully participated in all the Auction rounds between May 31 and November 14,
13 2016, that required the District's participation.

14 11. But during the morning round on November 15, 2016, the District failed to take
15 the most fundamental "action necessary" to successfully participate in the Auction—placing a
16 bid. Despite knowing that the FCC would deem a bidder's failure to enter a bid as a decision to
17 drop out of the Auction, the District's authorized bidder admitted that she did not "think to
18 actively submit a bid." The FCC's offer was \$114,494,613 in that round, well above the
19 contractual Minimum Bid Amount.

20 12. The District failed to follow the procedures and perform the checks that the
21 District and LPN had established to prevent just such an outcome. Contrary to the agreed
22 procedures, the District (i) did not generate a Bid Summary confirmation from the FCC Auction
23 website (which only the District's authorized bidder could access); (ii) signed a Bid Submission
24 Confirmation Sheet certifying falsely that the District had submitted a bid, despite not obtaining
25 the Bid Summary confirmation; and (iii) failed to verify that the bid had been submitted at any
26 time while the bidding for that round remained open.

27
28 ¹ The May 16, 2013 Funding Agreement, Bid Management Agreement, and Put/Call Option Agreement (and their amendments) are attached as Exhibits A, B, and C, respectively.

1 13. If the District had participated in the Auction as contractually required, it would
2 have submitted all the required bids and KCSM's spectrum-usage rights would have been fully
3 relinquished, like those of other full-power television stations in the same television market for
4 bids in excess of \$80 million, on information and belief.²

5 14. Instead, as the direct and immediate result of the District's actions (and inaction),
6 the FCC, in accordance with its well-publicized procedures, dropped KCSM from the Auction.

7 15. In an instant, LPN's option for 36.5% of the District's Auction proceeds became
8 worthless. LPN's investment—the subsidies to fund KCSM until the Auction and the time and
9 effort to prepare the District for it—was wasted.

10 16. Depriving LPN of the benefit of its bargain did not ~~stop~~ the District from
11 continuing to take LPN's funds. The District did not tell LPN in 2016 that it had failed to submit
12 a bid and been dropped from the Auction. Rather, despite its known failure to bid, the District
13 falsely certified on December 16, 2016, that it had "performed in all material respects all
14 agreements" with LPN so it could satisfy a condition precedent to LPN's funding obligation.

15 17. In reliance on the District's false certification, LPN made its next quarterly
16 payment of \$225,000 to the District on December 20, 2016.

17 18. During its first post-auction conversation with LPN on February 8, 2017, the
18 District kept silent about the false certification and the payment it induced. In breach of its
19 contractual reimbursement obligations, the District has not returned any portion of LPN's
20 \$3,375,000 funding payments.

21 19. LPN seeks damages, in an amount to be proven at trial, adequate to compensate
22 for (i) the value of its option to receive 36.5% of the Auction proceeds the District would have
23 received had it performed its obligation to bid in the Auction; and (ii) the District's failure to
24 reimburse LPN's \$3,375,000 funding payments (plus interest) as the Funding Agreement
25 requires.

26
27
28 ² The FCC is expected to issue a public notice announcing winning bidders and final bid prices in April 2017.

1 **THE PARTIES**

2 20. Plaintiff LocusPoint Networks, LLC is a Delaware limited liability company with
3 its principal place of business in Pleasanton, California.

4 21. Plaintiff LocusPoint II KCSM, LLC is a Delaware limited liability company with
5 its principal place of business in Pleasanton, California.

6 22. On information and belief, Defendant San Mateo County Community College
7 District is a community college district operating three colleges—Cañada College, College of San
8 Mateo and Skyline College—located in San Mateo County, California.

9 **JURISDICTION AND VENUE**

10 23. This action arises under the laws of the State of California and is within the subject
11 matter jurisdiction of this Court.

12 24. The District is a California community college district subject to the personal
13 jurisdiction of this Court. The District accepted this Court’s jurisdiction in Funding Agreement §
14 10.14.

15 25. Venue is proper under (i) California Code of Civil Procedure § 394(a) because this
16 is an action against a California community college district located in San Mateo County,
17 California; and (ii) Funding Agreement § 10.14, in which the District accepted the jurisdiction of,
18 and venue in, this Court.

19 26. The amount in controversy exceeds \$25,000, and unlimited civil jurisdiction is
20 proper under California Code of Civil Procedure § 88.

21 **FACTUAL BACKGROUND**

22 **The District Operates KCSM**

23 27. The District holds the FCC licenses and authorizations necessary to operate
24 KCSM-TV (RF Channel 43), a full-power, noncommercial, education television station located in
25 San Mateo, California (FCC Facility ID No. 58912).

26 28. An FCC Television Broadcast Station License authorizes a licensee “to use and
27 operate the radio transmitting apparatus” described in the license. The FCC authorizes licensees
28 to use radio transmitters at only the specific frequency, power, and location (among other things)

1 described in the license.

2 29. The KCSM website states that:

3 KCSM is located in the San Francisco Bay Area, the heart of the fifth largest
4 television and radio market in the United States with the potential of reaching an
5 audience of more than 6 million people. KCSM TV broadcasts 24 hours a day, and
6 our 500 kilowatt broadcast signal has a coverage area that includes San Mateo, San
7 Francisco, Santa Clara, Santa Cruz, Alameda, Contra Costa, Marin, Solano,
8 Sonoma and Napa counties.

9 30. KCSM transmits in the UHF band, at 644–650 MHz.

10 31. According to an FCC white paper, “[t]he propagation characteristics of the TV
11 bands, especially in UHF ranges between 470 MHz and 698 MHz, are well-suited for wireless
12 broadband applications.”³

13 **The District Plans to Sell KCSM or Auction Its Spectrum Usage Rights**

14 32. As of June 2011, KCSM was running an annual deficit of \$800,000. At the
15 June 8, 2011 meeting of the Board, the Board President stated that the District cannot continue to
16 subsidize KCSM.

17 33. Because of the deficit, the District hired an attorney practicing FCC regulation and
18 compliance law from a Washington D.C. firm to explore options for selling KCSM.

19 34. After debate, the Board agreed to proceed with an “RFP and sale process” for
20 KCSM. On December 7, 2011, the District issued an RFP to “qualified entities” to acquire
21 KCSM.

22 35. The District reported on February 14, 2012, that it had received bids from six
23 entities.

24 36. Eight days later, on February 22, 2012, President Obama signed into law the
25 Middle Class Tax Relief and Job Creation Act of 2012, which required the FCC to hold the
26 Auction within ten years.

27 37. Recognizing the potential to receive greater proceeds from the Auction than from a
28 sale, the Board decided on October 24, 2012, not to accept any of the six acquisition proposals.

³ FEDERAL COMMUNICATIONS COMMISSION, SPECTRUM ANALYSIS: OPTIONS FOR BROADCAST SPECTRUM (June 2010), available at <https://transition.fcc.gov/national-broadband-plan/spectrum-analysis-paper.pdf>, at 6.

1 38. Rather, as the November 14, 2012 Board meeting minutes reflect, Vice President
2 of the College of San Mateo⁴ Jan Roecks—with a team including the District’s FCC counsel—
3 proposed a new plan under which the District would contract with a third party to fund KCSM’s
4 operating deficit until the District could sell KCSM’s spectrum-usage rights in the Auction.
5 Going forward, the District would require its FCC counsel’s approval on all decisions regarding
6 the Auction.

7 39. The May 15, 2013 Board meeting minutes report that the District received four
8 proposals, but only two bids to subsidize KCSM until the Auction. Ms. Roecks recommended the
9 proposal from LPN as “the best and most valuable option for the District.” The Board accepted
10 that recommendation.

11 **LPN Agrees to Fund KCSM for a Share of the Auction Proceeds**

12 40. District Chancellor Ron Galatolo negotiated with LPN the general structure of the
13 agreements regarding LPN’s funding of KCSM and the sale of KCSM’s spectrum rights in the
14 Auction.

15 41. The District and LPN signed a binding Letter of Intent on March 19, 2013. The
16 letter documented (i) the District’s “interest in obtaining support in funding the operating
17 expenses of [KCSM] as soon as possible,” and (ii) LPN’s agreement to provide that funding in
18 the amount of \$3.6 million.

19 42. The District incurred no obligation to repay or provide any return on LPN’s
20 investment. Rather, LPN’s return (if any) would come as a portion of any proceeds the District
21 received from the Auction (when or if it occurred). The District represented that it (i) “will agree
22 to participate in the Auction and to place bids under which it would relinquish to the FCC
23 [KCSM’s] spectrum usage rights”; and (ii) will agree to pay LPN 36.5% of the “proceeds derived
24 from the District’s participation in the Auction.”

25 43. Thus, the District secured the funding it wanted and needed at no out-of-pocket
26 cost or risk to its ongoing operating budget, because LPN was willing to risk its investment
27 capital and return in exchange for the prospect of receiving 36.5% of uncertain Auction proceeds

28 _____
⁴ The titles of District employees in this Complaint reflect their current known positions.

1 at a time when the Auction's timing, design, process, spectrum supply and demand, and bidding
2 levels were all unknown.

3 44. In fact, there was substantial risk that the Auction might not occur at all. On
4 January 25, 2013, nearly two months before the parties signed the Letter of Intent, the National
5 Association of Broadcasters ("NAB") argued in a filing with the FCC that the FCC's pending
6 Auction design could not move forward unless certain "critical elements [were] fully addressed
7 and resolved," and pushed for a slower process.⁵ The NAB followed through by petitioning on
8 August 18, 2014, for judicial review of the FCC's order adopting rules to govern the Auction.
9 The lawsuit caused the FCC to delay the Auction in the face of "undeniable impediments,"⁶ and
10 was not resolved until an appellate court sustained the FCC order on June 12, 2015.⁷

11 45. The District and LocusPoint Networks, LLC formalized the arrangement described
12 in the Letter of Intent in three agreements executed on May 16, 2013: (i) a Funding Agreement
13 (amended December 17, 2015); (ii) a Put/Call Option Agreement (amended December 17, 2015);
14 and (iii) a Bid Management Agreement (amended December 8, 2015) (collectively "the
15 Agreements").

16 46. Effective September 1, 2013, as the Agreements permitted, LocusPoint Networks,
17 LLC assigned its rights and obligations under the Agreements to its wholly owned subsidiary,
18 LocusPoint II KCSM, LLC.

19 *LPN's Subsidy Payments*

20 47. In the Funding Agreement, LPN agreed to subsidize the District's operation of
21 KCSM up to \$3,600,000, with "each Subsidy Payment . . . in an amount equal to \$225,000,"
22 payable quarterly.

23 48. As a condition precedent to LPN's obligation to make each quarterly payment, the
24 District agreed to provide LPN "a duly executed Compliance Certificate attesting," among other
25

26 ⁵ See National Association of Broadcasters, Comments on Auction Design (Jan. 25, 2013),
27 <http://www.nab.org/documents/filings/IncentiveAuctionComments012513.pdf>.

28 ⁶ See Gary Epstein, *Incentive Auction Progress Report*, FCC Blog, October 24, 2014,
<https://www.fcc.gov/news-events/blog/2014/10/24/incentive-auction-progress-report>.

⁷ See *Nat'l Ass'n of Broadcasters v. F.C.C.*, 789 F.3d 165 (D.C. Cir. 2015).

1 things, that there had been no breaches or “Triggering Events”—i.e., the District’s breach of a
2 representation or warranty or “default in the performance of or compliance with any term” in the
3 Agreements:

4 (i) The representations and warranties contained in the Funding
5 Agreement and in the other Funding Documents are true, correct and complete in
6 all material respects to the same extent as though made on and as of the date
hereof . . . ;

7 (ii) No event has occurred or would result from the making of such
8 Subsidy Payment that would constitute a Triggering Event or a Potential
Triggering Event;

9 (iii) [the District] has performed in all material respects all agreements
10 and satisfied all conditions which the Funding Agreement and each other
[Agreement] provides shall be performed or satisfied by it on or before the date
hereof; . . .

11 (vi) No Material Adverse Effect has occurred.

12 49. Under the Funding Agreement, a Material Adverse Effect included “the
13 impairment of the ability of [the District] to perform, or of LPN to enforce, . . . [the District’s]
14 material obligations under any [Agreement].”

15 50. LPN made every Subsidy Payment required under the Funding Agreement after
16 receiving a Compliance Certificate from the District.

17 51. To date, LPN has paid the District a total of \$3,375,000 in Subsidy Payments.

18 *The Auction: the District’s Obligation to Bid and LPN’s Option for Its Share of Proceeds*

19 52. In consideration for LPN’s Subsidy Payments, the District made several promises
20 about its participation in the upcoming Auction to protect LPN’s investment.

21 53. The District promised that KCSM would “participate in the Auction.” (Put/Call
22 Option Agreement § 10.b.) The District was to designate “up to three individuals who shall serve
23 as the District’s authorized bidders during the Auction” and who are “authorized to place bids on
24 behalf of the District during the Auction.” (Bid Management Agreement § 2.6.3, as amended.)

25 54. The District committed in all three Agreements to take all the necessary actions to
26 relinquish KCSM’s broadcast spectrum usage rights in the Auction: (i) the Funding Agreement
27 required the District to “take all actions necessary to cause the spectrum usage rights associated
28 with the FCC License to be relinquished in the Auction” (§ 6.9); (ii) the Bid Management

1 Agreement bound the District to “[t]ake all such other actions as may be reasonably required or as
2 LPN, acting in its capacity of bidding consultant and agent, may request in order for the District
3 to successfully participate in the Auction and relinquish the spectrum usage rights associated with
4 the License at a price that is at or above the [\$3,000,000] Minimum Bid Amount” (§ 2.6.5); and
5 (iii) the Put/Call Option Agreement bound the District to perform its obligations under the other
6 Agreements (§ 10.b.).

7 55. The District granted LPN an option “to receive the LPN Share [36.5%] of the
8 proceeds derived from the relinquishment of the Station’s spectrum usage rights in connection
9 with the Auction” (the “Auction Option”). (Put/Call Option Agreement §§ 1 & 2(a).)

10 56. In addition to the District’s affirmative obligations to participate in the Auction,
11 the District promised not to do anything to jeopardize the Auction Option: the District committed
12 to “take no action that could reasonably be expected to impede, interfere with, delay, postpone or
13 materially adversely affect the transactions contemplated by this [Put/Call Option] Agreement or
14 the likelihood of such transactions being consummated.” (Put/Call Option Agreement § 10.d.)

15 *LPN’s Contractual Reimbursement Right*

16 57. The Funding Agreement requires the District to reimburse LPN’s Subsidy
17 Payments upon a “Triggering Event,” including any “default in the performance of or compliance
18 with any term” in the Agreements.

19 58. Upon such an event that results in a Material Adverse Effect, LPN has “sole
20 discretion” to “declare all or any portion of the Subsidy Payments . . . immediately due and
21 payable,” and the District shall deliver the amount due in “same day funds, free of any restriction
22 or condition, . . . to LPN not later than noon San Francisco time on the date due in the LPN
23 Account.” (§§ 9.1 & 9.2.B.)

24 59. The District also agreed to return LPN’s payments with interest at 8% annually in
25 the event of the District’s willful breach of any Agreement. (Funding Agreement § 9.1.)

26 **The FCC Adopts Rules for the Auction and Simplifies Auction Participation** –

27 60. The Auction, as described by the FCC, would consist of “two separate but
28 interdependent auctions—a reverse auction, which will determine the price at which broadcasters

1 will voluntarily relinquish their spectrum usage rights; and a forward auction, which will
2 determine the price companies are willing to pay for flexible use wireless licenses.”⁸ The FCC
3 would stand in the middle, establishing the supply of spectrum usage rights in the reverse auction
4 by making offers to broadcasters willing to relinquish them, as well as the demand for spectrum
5 in the forward auction by soliciting bids for new wireless licenses from wireless providers.

6 61. As the FCC described, the reverse auction and the forward auction must “work
7 together. Ultimately, the reverse auction requires information about how much bidders are
8 willing to pay for spectrum licenses in the forward auction; and the forward auction requires
9 information regarding what spectrum rights were tendered in the reverse auction.”⁹

10 62. The FCC’s role was to manage the market for the spectrum licenses “to allow
11 market forces to determine the highest and best use of spectrum.”¹⁰

12 63. Throughout its development of bidding procedures for the Auction, the FCC
13 sought to facilitate broadcaster participation by simplifying the bidding process for bidders. The
14 FCC published an order establishing the Auction design framework, followed by a detailed public
15 notice explaining all bidding and application procedures.¹¹ And it conducted numerous
16 educational efforts (such as outreach meetings, webinars, and tutorials) and published a “FCC
17 Incentive Auction Reverse Auction Bidding System User Guide” (“RABS User Guide”)¹²
18 specifically for participating stations.

19
20 ⁸ Federal Communications Commission, *How It Works: The Incentive Auction Explained*,
21 <https://www.fcc.gov/about-fcc/fcc-initiatives/incentive-auctions/how-it-works> (last visited
22 March 28, 2017).

23 ⁹ *Id.* For an explanation of the operation of forward and reverse auctions, see Federal
24 Communications Commission, *Incentive Auction Rules Option and Discussion*, at
25 <http://wireless.fcc.gov/incentiveauctions/learn-program/rule-option/introduction.html> (last visited
26 March 28, 2017).

27 ¹⁰ FEDERAL COMMUNICATIONS COMMISSION, FCC 15-78, PUBLIC NOTICE: PROCEDURES FOR
28 COMPETITIVE BIDDING IN AUCTION 1000, INCLUDING INITIAL CLEARING TARGET DETERMINATION,
QUALIFYING TO BID, AND BIDDING IN AUCTIONS 1001 (REVERSE) AND 1002 (FORWARD) (2015),
available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-78A1_Rcd.pdf, at 3.

¹¹ See FEDERAL COMMUNICATIONS COMMISSION, FCC 14-50, IN THE MATTER OF EXPANDING THE
ECONOMIC AND INNOVATION OPPORTUNITIES OF SPECTRUM THROUGH INCENTIVE AUCTIONS
REPORT AND ORDER (2014), *available at* https://apps.fcc.gov/edocs_public/attachmatch/FCC-14-50A1.pdf; see also FCC 15-78.

¹² *Available at* <https://www.fcc.gov/file/3797/download>

1 64. Before each round of the Auction, the FCC would inform each bidder whether its
2 station would be in “bidding” status (i.e., whether it would be able to submit a bid in that round).
3 For bidders such as the District that offered to fully relinquish their spectrum, the choice in
4 bidding status was either to accept or reject the price offered by the FCC. The FCC stated that a
5 bidder such as the District “that has or is interested in only a single bid option will have a simple
6 choice: whether to accept the lower clock price offered for its station’s currently held option or to
7 reject that offer and drop out of the bidding.”¹³

8 65. If a broadcaster were to enter a bid accepting the FCC’s price, the FCC would
9 determine whether to declare that bid a “provisionally winning” bid or to offer a lower price in a
10 subsequent round.¹⁴

11 66. Once all stations had either dropped out or been declared “provisionally winning,”
12 wireless providers would bid for the offered spectrum in a forward auction stage. The Auction
13 would end (and “provisionally winning” bidders would be named winning bidders) when
14 forward-auction prices in the largest markets met FCC benchmarks and total forward-auction
15 revenues covered (i) the winning reverse-auction bids, (ii) the cost to reimburse stations assigned
16 new channels as a result of the Auction for their reasonably incurred relocation expenses, and (iii)
17 the FCC’s administrative costs.

18 67. If those criteria were not met at the end of a stage, the FCC would conduct another
19 stage of the Auction at a lower spectrum-clearing target, resulting in a lower price offered to
20 participating stations. The Auction was expected to have multiple stages, each containing dozens
21 of bidding rounds lasting over several months.

22 **The District and LPN Prepare for the Auction to Ensure the District’s Successful**
23 **Participation**

24 68. The District filed an application¹⁵ with the FCC to participate in the Auction on
25

26 ¹³ FCC 15-78 at 60.

27 ¹⁴ The FCC could also determine that the broadcaster was not needed, and remove it from the
Auction.

28 ¹⁵ As a broadcaster, the District applied to participate in the “reverse auction” portion of the
Auction.

1 January 6, 2016, selecting “Go Off-Air” as its sole bidding option.¹⁶

2 69. The District designated its employees Ms. Roecks, Eugene Whitlock, and
3 Executive Vice Chancellor Kathy Blackwood to act as its “authorized bidders.” Under the FCC’s
4 procedures, only these three authorized bidders would receive and be authorized to use an
5 electronic code key (a “SecurID token”) from the FCC, which was necessary to “place bids for
6 the applicant during the auction.”¹⁷

7 70. Even before the application was filed, the District’s authorized bidders held
8 meetings with LPN to begin preparing for the Auction, consistent with LPN’s agreement to
9 “[t]rain and supervise the qualified personnel that the District appoints to act as its authorized
10 bidders in the Auction to assure their satisfactory performance of the duties associated with
11 authorized bidders in the Auction.”

12 71. These meetings were vital because the consequences of not submitting a bid were
13 enormous—as the FCC repeatedly warned, a missing bid would be deemed a bid to drop out of
14 the Auction, precluding any future bidding in any future stage or round. This warning was
15 included in official documents adopted by the FCC, in the RABS User Guide, in materials
16 provided in connection with the FCC Mock Auction documents, and in other education materials
17 disseminated before the Auction.

18 72. To ensure that bidders could deal with contingencies and avoid an unintentional
19 failure to submit a bid, the FCC also implemented backup mechanisms, such as (i) permitting
20 applicants to identify “up to three authorized bidders who are authorized to place bids for the
21 applicant in the auction”; and (ii) installing a telephonic backup bidding system if a bidder were
22 to experience technical problems with its computer or with the FCC’s online Auction bidding
23 system.

24
25 ¹⁶ Bidders with a station in the UHF television band also could preserve the option to bid to move
to the VHF band. In its agreements with LPN, the District forswore that option.

26 ¹⁷ FEDERAL COMMUNICATIONS COMMISSION, DA 15-1252, INSTRUCTIONS FOR FCC FORM 177
27 APPLICATION TO PARTICIPATE IN THE REVERSE AUCTION (AUCTION 1001) (2015) *available at*
28 https://apps.fcc.gov/edocs_public/attachmatch/DA-15-1252A1.pdf at 7. The FCC also specified
that “[t]he username and the RSA token should be used only by the authorized bidder to which it
was assigned.” (RABS User Guide at 7.)

1 73. The District's three authorized bidders met with an LPN representative in
2 December 2015 to begin their Auction preparation. Joining them at this meeting were
3 representatives from PricewaterhouseCoopers ("PwC"), which LPN had engaged at its expense to
4 consult with the District because an FCC rule, scheduled to take effect in January 2016,
5 established a "Quiet Period" prohibiting communications between the District and LPN during
6 the Auction about the District's bids or bidding strategy.¹⁸

7 74. In amending the Bid Management Agreement on December 8, 2015, the District
8 agreed to "consult in every round during the Auction with PwC" but acknowledged that PwC was
9 "not assuming any additional duties or obligations directly to the District."

10 75. Chancellor Galatolo and two of the District's authorized bidders attended another
11 meeting with an LPN representative in December 2015.

12 76. At LPN's request, one of the District's authorized bidders signed a Confidential
13 Bidding Plan for KCSM for Incentive Auction on January 11, 2016. The plan required that
14 "Authorized Bidders will complete and sign a Bid Submission Confirmation sheet, located in a
15 secured Auction Playbook, following the submission of the bid for each Licensee in each round
16 of the Auction."

17 77. PwC requested that the District's authorized bidder also generate a Bid Summary
18 from the FCC's Auction website that confirmed the time and amount of the bid.

19 78. The District submitted a commitment to accept the FCC's opening price offer for
20 the relinquishment of the KCSM spectrum usage rights on March 29, 2016.

21 79. The District participated with PwC in the FCC's May 2016 mock auction. The
22 District's three authorized bidders practiced the bidding process and followed the procedures to
23 which the District had agreed.

24
25
26
27
28

¹⁸ The FCC issued this regulation, 47 C.F.R. § 1.2205, on August 15, 2014, and released guidance on October 6, 2015, regarding prohibited communications during the "Quiet Period" covering the time of the Auction. *See* FEDERAL COMMUNICATIONS COMMISSION PUBLIC NOTICE, DA 15-1129, GUIDANCE REGARDING THE PROHIBITION OF CERTAIN COMMUNICATIONS DURING THE INCENTIVE AUCTION, AUCTION 1000 (2015), available at https://apps.fcc.gov/edocs_public/attachmatch/DA-15-1129A1.pdf

1 **The District Fails to Enter a Bid and Is Dropped from the Auction**

2 80. Bidding in the Auction began on May 31, 2016. Following the strategy and
3 procedures to which the District had agreed, one of the District's authorized bidders, Ms. Roecks,
4 placed a bid on the District's behalf to accept the FCC's opening price offer of \$353,887,920.

5 81. Over the three stages of the auction, until November 14, 2016, an authorized
6 District bidder logged into the FCC Reverse Auction Bidding System for 52 rounds in which a
7 bid was potentially required.

8 82. While any of the District's three authorized bidders could have executed the
9 bidding function on the District's behalf, Ms. Roecks performed this role in 46 of those 52
10 rounds. And she successfully placed bids on the District's behalf in 17 rounds in which a bid
11 submission was required.

12 83. After doing so, her general practice—consistent with the agreed procedures—was
13 to sign the Bid Submission Confirmation Sheets and generate Bid Summaries from the FCC
14 Auction website confirming the District's bids in rounds that required a bid.

15 84. As the Auction progressed, however, the District's bidders strayed from the agreed
16 procedures. For example, on September 2, 2016 (Stage 2, Round 12) and November 10, 2016
17 (Stage 3, Round 18), the District's authorized bidder failed to sign the Bid Submission
18 Confirmation Sheets.

19 85. Stage 3, Round 23 of the Auction occurred on November 15, 2016. The bidding
20 window for that round was open between 7:00 a.m. and 8:00 a.m. PST.

21 86. Ms. Roecks, the only District authorized bidder who was present for the bidding,
22 did not submit a bid on the District's behalf in Stage 3, Round 23.

23 87. Ms. Roecks stated that she did not "think to actively submit a bid" and did not
24 click the "bid" button "which we had done for all active rounds since May."

25 88. Nor did Ms. Roecks follow her admitted "normal activity" in generating a Bid
26 Summary confirmation from the FCC Auction website, as PwC had requested.

27 89. Ms. Roecks signed a Bid Submission Confirmation Sheet stating that she had
28 "submitted the bid according to bid strategy" at "7:12 AM PST" for Stage 3, Round 23, in the

1 amount of \$114,494,613.

2 90. Thus, the District not only failed to submit a bid, but also (i) failed to follow its
3 normal procedure of generating a confirmation directly from the FCC Auction website, (ii) falsely
4 certified that it had submitted a bid despite not obtaining that confirmation, and (iii) failed to
5 verify whether it had submitted a bid during the remaining approximately 48 minutes that Round
6 23 bidding remained open.

7 91. When Ms. Roecks logged into the FCC Auction website for the next round
8 approximately three hours later, she learned that the District had been dropped from the Auction
9 due to its failure to submit a bid in the prior round.

10 92. The FCC informed the District—as it had repeatedly warned—that “the auction is
11 automated, is not built to reinstate bidders for any reason, and there was no way to get back into
12 the auction regardless of the reason.”

13 93. Ms. Roecks informed Chancellor Galatolo of the failure to bid. At his request, Ms.
14 Roecks and PwC both documented the events of the day and closed down the bidding for KCSM
15 as it was no longer allowed to participate in the Auction.

16 **The District Falsely Certifies Its Performance in Order to Continue Receiving**
17 **Quarterly Subsidy Payments from LPN**

18 94. The District did not inform LPN that it had failed to submit a bid and had
19 consequently been dropped from the Auction.

20 95. Despite its known failure to bid, the District certified on December 16, 2016, that
21 “[n]o event has occurred . . . that would constitute a Triggering Event” and the District had
22 “performed in all material respects all agreements” with LPN. The District’s failure to submit a
23 bid was a “Triggering Event” under the Funding Agreement because it was a “default in the
24 performance of or compliance with” the Agreements.

25 96. The District’s false certification enabled it to continue receiving quarterly Subsidy
26 Payments from LPN, which LPN had no obligation to make unless (among other things) the
27 District had performed its contractual obligations and no Triggering Events had occurred.

28 97. In reliance on the District’s false certification, LPN made its next quarterly

1 Subsidy Payment of \$225,000 to the District on December 20, 2016.

2 98. The District could have taken action to avoid inducing LPN to make a payment on
3 the basis of a false certification, or to return the funds as soon as possible. For example, the
4 District could have declined to sign the December 16, 2016 certificate it knew was false. Or it
5 could have segregated LPN's December 20 payment.

6 99. And even if the District had legitimate concerns about communicating with LPN
7 during the Quiet Period, it did not alert LPN about its false certification (and the Subsidy Payment
8 it induced) even after the Quiet Period ended on February 6, 2017, when the District had the
9 opportunity to correct the record during a February 8, 2017 call with LPN.

10 100. Instead, the District deposited LPN's money and stayed silent.

11 101. Under Funding Agreement § 9.1, LPN notified the District on February 21, 2017,
12 that the \$3,375,000 in Subsidy Payments that LPN had paid to date were "immediately due and
13 payable."

14 102. As of the date of this Complaint, the District has kept all \$3,375,000 of LPN's
15 funds.

16 **FIRST CAUSE OF ACTION**

17 **Breach of Contract Under California Civil Code § 3300 *et seq.***

18 **(Funding Agreement § 6.9)**

19 103. LPN hereby incorporates the preceding paragraphs 1 through 102 of this
20 Complaint by reference as if set forth here again in full.

21 104. The Funding Agreement (amended December 17, 2015) is a valid and enforceable
22 written agreement between the District and LPN.

23 105. LPN has fully performed its duties under the Funding Agreement.

24 106. Funding Agreement § 6.9 required the District to "take all actions necessary to
25 cause the spectrum usage rights associated with the FCC License to be relinquished in the
26 Auction (as such term is defined in the Option Agreement), subject to the terms set forth in the
27 Bid Management Agreement."

28 107. Entering a bid in the Auction, which only the District's authorized bidders were

1 authorized to do, was “necessary to cause the spectrum usage rights associated with the FCC
2 License to be relinquished in the Auction.”

3 108. As detailed above, the District willfully failed to enter a bid in Stage 3, Round 23
4 of the Auction on November 15, 2016, which resulted in the District being dropped from the
5 Auction.

6 109. The Auction Option was consideration for LPN’s Funding Agreement obligations.
7 (Funding Agreement at 1.) As a direct and proximate result of the District’s breach, the Auction
8 Option became worthless. LPN therefore suffered damages in the amount of 36.5% of the
9 Auction proceeds to which it would have been entitled by the Auction Option, and which would
10 have resulted from the relinquishment of KCSM’s spectrum if the District had performed its
11 obligations under the Funding Agreement.

12 110. LPN is entitled to recover from the District the damages sustained by LPN as a
13 result of the District’s wrongful acts described in this Complaint. The amount of such damages
14 will be proven at trial.

15 **SECOND CAUSE OF ACTION**

16 **Breach of Contract Under California Civil Code § 3300 *et seq.***

17 **(Bid Management Agreement § 2.6.5)**

18 111. LPN hereby incorporates the preceding paragraphs 1 through 110 of this
19 Complaint by reference as if set forth here again in full.

20 112. The Bid Management Agreement (amended December 8, 2015) is a valid and
21 enforceable written agreement between the District and LPN.

22 113. LPN has fully performed its duties under the Bid Management Agreement.

23 114. Bid Management Agreement § 2.6.5 required the District to “[t]ake all such other
24 actions as may be reasonably required . . . in order for the District to successfully participate in
25 the Auction and relinquish the spectrum usage rights associated with the License at a price that is
26 at or above the [\$3,000,000] Minimum Bid Amount.”

27 115. Entering a bid in the Auction, which only the District’s authorized bidders were
28 authorized to do, was “reasonably required . . . for the District to successfully participate in the

1 Auction and relinquish the spectrum usage rights associated with the License.”

2 116. As detailed above, the District failed to enter a bid in Stage 3, Round 23 of the
3 Auction on November 15, 2016, when the FCC’s offer was above the Minimum Bid Amount.
4 The District’s failure to bid resulted in the District being dropped from the Auction.

5 117. The Bid Management Agreement, the Put/Call Option Agreement, and the
6 Funding Agreement together formed the entire agreement between LPN and the District. (Bid
7 Management Agreement § 8.6.) As a direct and proximate result of the District’s breach, the
8 Auction Option became worthless. LPN therefore suffered damages in the amount of 36.5% of
9 the Auction proceeds to which it would have been entitled by the Auction Option, and which
10 would have resulted from the relinquishment of KCSM’s spectrum if the District had performed
11 its obligations under the Bid Management Agreement.

12 118. LPN is entitled to recover from the District the damages sustained by LPN as a
13 result of the District’s wrongful acts described in this Complaint. The amount of such damages
14 will be proven at trial.

15 **THIRD CAUSE OF ACTION**

16 **Breach of Contract Under California Civil Code § 3300 *et seq.***

17 **(Bid Management Agreement § 2.6.5)**

18 119. LPN hereby incorporates the preceding paragraphs 1 through 118 of this
19 Complaint by reference as if set forth here again in full.

20 120. The Bid Management Agreement (amended December 8, 2015) is a valid and
21 enforceable written agreement between the District and LPN.

22 121. LPN has fully performed its duties under the Bid Management Agreement.

23 122. Bid Management Agreement § 2.6.5 required the District to “[t]ake all such other
24 actions . . . as LPN, acting in its capacity as bidding consultant and agent, *may request* in order
25 for the District to successfully participate in the Auction and relinquish the spectrum usage rights
26 associated with the License at a price that is at or above the [\$3,000,000] Minimum Bid Amount.”

27 123. In the Confidential Bidding Plan for KCSM for Incentive Auction, to which the
28 District agreed on January 11, 2016, LPN requested that the District’s authorized bidders

1 “complete and sign a Bid Submission Confirmation sheet, located in a secured Auction Playbook,
2 following the submission of the bid for each Licensee in each round of the Auction.” By virtue of
3 Bid Management Agreement § 2.6.5, the District was contractually bound to perform this
4 obligation.

5 124. The District breached this obligation because, as detailed above, Ms. Roecks
6 signed a false Bid Submission Confirmation Sheet stating that she had “submitted the bid
7 according to bid strategy” at “7:12 AM PST” for Stage 3, Round 23, in the amount of
8 \$114,494,613.

9 125. As a direct and proximate result of the District’s breach, the District was dropped
10 from the Auction, and LPN’s Auction Option therefore became worthless. LPN therefore
11 suffered damages in the amount of 36.5% of the Auction proceeds to which it would have been
12 entitled by the Auction Option, and which would have resulted from the relinquishment of
13 KCSM’s spectrum if the District had performed its obligations under the Bid Management
14 Agreement.

15 126. LPN is entitled to recover from the District the damages sustained by LPN as a
16 result of the District’s wrongful acts described in this Complaint. The amount of such damages
17 will be proven at trial.

18 FOURTH CAUSE OF ACTION

19 **Breach of Contract Under California Civil Code § 3300 *et seq.***

20 **(Bid Management Agreement § 2.6.5, Amendment Attachment A: Letter of Authorization)**

21 127. LPN hereby incorporates the preceding paragraphs 1 through 126 of this
22 Complaint by reference as if set forth here again in full.

23 128. The Bid Management Agreement (amended December 8, 2015) is a valid and
24 enforceable written agreement between the District and LPN.

25 129. LPN has fully performed its duties under the Bid Management Agreement.

26 130. Attachment A to the Amendment to the Bid Management Agreement was a Letter
27 of Authorization that required the District to “cooperate with PwC in accordance with Section 2.6
28 of the Agreement as it performs its engagement by LPN to help ensure compliance with the

1 FCC's rules pertaining to the Auction under the Agreement.”

2 131. Bid Management Agreement § 2.6.5 required the District to “[t]ake all such other
3 actions . . . as LPN, acting in its capacity as bidding consultant and agent, may request in order
4 for the District to successfully participate in the Auction and relinquish the spectrum usage rights
5 associated with the License at a price that is at or above the [\$3,000,000] Minimum Bid Amount.”

6 132. As detailed above, the District breached § 2.6.5 of the Bid Management
7 Agreement (as amended) by, among other things, failing to generate a confirmation directly from
8 the FCC Auction website in Stage 3, Round 23 of the Auction on November 15, 2016, as
9 requested by PwC.

10 133. As a direct and proximate result of the District's breach, the District was dropped
11 from the Auction, and LPN's Auction Option therefore became worthless. LPN therefore
12 suffered damages in the amount of 36.5% of the Auction proceeds to which it would have been
13 entitled by the Auction Option, and which would have resulted from the relinquishment of
14 KCSM's spectrum if the District had performed its obligations under the Put/Call Option
15 Agreement.

16 134. LPN is entitled to recover from the District the damages sustained by LPN as a
17 result of the District's wrongful acts described in this Complaint. The amount of such damages
18 will be proven at trial.

19 **FIFTH CAUSE OF ACTION**

20 **Breach of Contract Under California Civil Code § 3300 *et seq.***

21 **(Put/Call Option Agreement § 10.d.)**

22 135. LPN hereby incorporates the preceding paragraphs 1 through 134 of this
23 Complaint by reference as if set forth here again in full.

24 136. The Put/Call Option Agreement (amended December 17, 2015) is a valid and
25 enforceable written agreement between the District and LPN.

26 137. LPN has fully performed its duties under the Put/Call Option Agreement.

27 138. Put/Call Option Agreement § 10.d. obligated the District to “take no action that
28 could reasonably be expected to impede, interfere with, delay, postpone or materially adversely

1 “complete and sign a Bid Submission Confirmation sheet, located in a secured Auction Playbook,
2 following the submission of the bid for each Licensee in each round of the Auction.” By virtue of
3 Bid Management Agreement § 2.6.5, the District was contractually bound to perform this
4 obligation.

5 124. The District breached this obligation because, as detailed above, Ms. Roecks
6 signed a false Bid Submission Confirmation Sheet stating that she had “submitted the bid
7 according to bid strategy” at “7:12 AM PST” for Stage 3, Round 23, in the amount of
8 \$114,494,613.

9 125. As a direct and proximate result of the District’s breach, the District was dropped
10 from the Auction, and LPN’s Auction Option therefore became worthless. LPN therefore
11 suffered damages in the amount of 36.5% of the Auction proceeds to which it would have been
12 entitled by the Auction Option, and which would have resulted from the relinquishment of
13 KCSM’s spectrum if the District had performed its obligations under the Bid Management
14 Agreement.

15 126. LPN is entitled to recover from the District the damages sustained by LPN as a
16 result of the District’s wrongful acts described in this Complaint. The amount of such damages
17 will be proven at trial.

18 **FOURTH CAUSE OF ACTION**

19 **Breach of Contract Under California Civil Code § 3300 *et seq.***

20 **(Bid Management Agreement § 2.6.5, Amendment Attachment A: Letter of Authorization)**

21 127. LPN hereby incorporates the preceding paragraphs 1 through 126 of this
22 Complaint by reference as if set forth here again in full.

23 128. The Bid Management Agreement (amended December 8, 2015) is a valid and
24 enforceable written agreement between the District and LPN.

25 129. LPN has fully performed its duties under the Bid Management Agreement.

26 130. Attachment A to the Amendment to the Bid Management Agreement was a Letter
27 of Authorization that required the District to “cooperate with PwC in accordance with Section 2.6
28 of the Agreement as it performs its engagement by LPN to help ensure compliance with the

1 FCC's rules pertaining to the Auction under the Agreement.”

2 131. Bid Management Agreement § 2.6.5 required the District to “[t]ake all such other
3 actions . . . as LPN, acting in its capacity as bidding consultant and agent, may request in order
4 for the District to successfully participate in the Auction and relinquish the spectrum usage rights
5 associated with the License at a price that is at or above the [\$3,000,000] Minimum Bid Amount.”

6 132. As detailed above, the District breached § 2.6.5 of the Bid Management
7 Agreement (as amended) by, among other things, failing to generate a confirmation directly from
8 the FCC Auction website in Stage 3, Round 23 of the Auction on November 15, 2016, as
9 requested by PwC.

10 133. As a direct and proximate result of the District's breach, the District was dropped
11 from the Auction, and LPN's Auction Option therefore became worthless. LPN therefore
12 suffered damages in the amount of 36.5% of the Auction proceeds to which it would have been
13 entitled by the Auction Option, and which would have resulted from the relinquishment of
14 KCSM's spectrum if the District had performed its obligations under the Put/Call Option
15 Agreement.

16 134. LPN is entitled to recover from the District the damages sustained by LPN as a
17 result of the District's wrongful acts described in this Complaint. The amount of such damages
18 will be proven at trial.

19 **FIFTH CAUSE OF ACTION**

20 **Breach of Contract Under California Civil Code § 3300 *et seq.***

21 **(Put/Call Option Agreement § 10.d.)**

22 135. LPN hereby incorporates the preceding paragraphs 1 through 134 of this
23 Complaint by reference as if set forth here again in full.

24 136. The Put/Call Option Agreement (amended December 17, 2015) is a valid and
25 enforceable written agreement between the District and LPN.

26 137. LPN has fully performed its duties under the Put/Call Option Agreement:

27 138. Put/Call Option Agreement § 10.d. obligated the District to “take no action that
28 could reasonably be expected to impede, interfere with, delay, postpone or materially adversely

1 affect the transactions contemplated by this Agreement or the likelihood of such transactions
2 being consummated.”

3 139. As detailed above, the District breached § 10.d. by, among other things, (i) failing
4 to bid in Stage 3, Round 23 of the Auction on November 15, 2016, which resulted in the District
5 being dropped from the Auction; (ii) failing to follow its normal procedure of generating a
6 confirmation directly from the FCC Auction website; (iii) certifying that it had submitted a bid
7 despite not obtaining that confirmation, and (iv) failing to verify whether it had submitted a bid
8 during the remaining time that Round 23 bidding remained open.

9 140. The District’s conduct could have reasonably been “expected to impede, interfere
10 with, delay, postpone or materially adversely affect the” Auction Option.

11 141. As a direct and proximate result of the District’s breach, the Auction Option
12 became worthless. LPN therefore suffered damages in the amount of 36.5% of the Auction
13 proceeds to which it would have been entitled by the Auction Option, and which would have
14 resulted from the relinquishment of KCSM’s spectrum if the District had performed its
15 obligations under the Put/Call Option Agreement.

16 142. LPN is entitled to recover from the District the damages sustained by LPN as a
17 result of the District’s wrongful acts described in this Complaint. The amount of such damages
18 will be proven at trial.

19 **SIXTH CAUSE OF ACTION**

20 **Breach of Contract Under California Civil Code § 3300 *et seq.***

21 **(Put/Call Option Agreement § 10.b.)**

22 143. LPN hereby incorporates the preceding paragraphs 1 through 142 of this
23 Complaint by reference as if set forth here again in full.

24 144. The Put/Call Option Agreement (amended December 17, 2015) is a valid and
25 enforceable written agreement between the District and LPN.

26 145. LPN has fully performed its duties under the Put/Call Option Agreement.

27 146. Put/Call Option Agreement § 10.b. required the District to perform its obligations
28 under the Funding Agreement and the Bid Management Agreement.

1 147. As described above in the five Causes of Action of this Complaint, the District
2 breached its obligations under the Funding Agreement and the Bid Management Agreement,
3 thereby breaching § 10.b of the Put/Call Option Agreement.

4 148. As a direct and proximate result of the District's breach, the Auction Option
5 became worthless. LPN therefore suffered damages in the amount of 36.5% of the Auction
6 proceeds to which it would have been entitled by the Auction Option, and which would have
7 resulted from the relinquishment of KCSM's spectrum if the District had performed its
8 obligations under the Put/Call Option Agreement.

9 149. LPN is entitled to recover from the District the damages sustained by LPN as a
10 result of the District's wrongful acts described in this Complaint. The amount of such damages
11 will be proven at trial.

12 **SEVENTH CAUSE OF ACTION**

13 **Breach of Contract Under California Civil Code § 3300 *et seq.***

14 **(Funding Agreement § 6.9)**

15 150. LPN hereby incorporates the preceding paragraphs 1 through 149 of this
16 Complaint by reference as if set forth here again in full.

17 151. The Funding Agreement (amended December 17, 2015) is a valid and enforceable
18 written agreement between the District and LPN.

19 152. LPN has fully performed its duties under the Funding Agreement.

20 153. Funding Agreement § 6.9 required the District to "perform all of its obligations
21 under the terms of" the Bid Management Agreement and the Put/Call Option Agreement.

22 154. As described above in the six Causes of Action of this Complaint, the District
23 breached its obligations under the Bid Management Agreement and the Put/Call Option
24 Agreement, thereby breaching § 6.9 of the Funding Agreement.

25 155. As a direct and proximate result of the District's breach, the Auction Option
26 became worthless. LPN therefore suffered damages in the amount of 36.5% of the Auction
27 proceeds to which it would have been entitled by the Auction Option, and which would have
28 resulted from the relinquishment of KCSM's spectrum if the District had performed its

1 obligations under the Funding Agreement.

2 **EIGHTH CAUSE OF ACTION**

3 **Breach of Contract Under California Civil Code § 3300 *et seq.***

4 **(Reimbursement under Funding Agreement §§ 9.1–9.2)**

5 156. LPN hereby incorporates the preceding paragraphs 1 through 155 of this
6 Complaint by reference as if set forth here again in full.

7 157. The Funding Agreement (amended December 17, 2015) is a valid and enforceable
8 written agreement between the District and LPN.

9 158. LPN has fully performed its duties under the Funding Agreement.

10 159. The Funding Agreement obligates the District to reimburse LPN's Subsidy
11 Payments upon a "Triggering Event," which includes any "default in the performance of or
12 compliance with any term contained in (a) this [Funding] Agreement . . . or (b) the [Put/Call]
13 Option Agreement or the Bid Management Agreement" that "result[s] in a Material Adverse
14 Effect." Under Funding Agreement § 1.1, Material Adverse Effects include "the impairment of
15 the ability of [the District] to perform, or of LPN to enforce, the Reimbursement Obligations or
16 any other material obligations under any" of the Agreements.

17 160. As described above in the seven Causes of Action, the District defaulted in the
18 performance of the Funding Agreement, the Put/Call Option Agreement, and the Bid
19 Management Agreement.

20 161. These defaults resulted in a Material Adverse Effect because they resulted in the
21 District being dropped from the Auction, which impaired the District's ability to perform its
22 obligations under the Agreements, such as its obligations to "participate in the Auction" (Put/Call
23 Option Agreement § 10.b) and to "take all actions necessary to cause the spectrum usage rights
24 associated with the FCC License to be relinquished in the Auction" (Funding Agreement § 6.9).

25 162. Thus, the defaults described above in the seven Causes of Action constitute
26 Triggering Events.

27 163. A Triggering Event also occurs when "[a]ny representation, warranty, certification
28 or other statement made by [the District] shall be false in any material respect on the date as of

1 which made” and results in a Material Adverse Effect. (Funding Agreement § 9.1(C).)

2 164. As described above, the District’s December 16, 2016 certification was false when
3 made. The District certified that “[n]o event has occurred . . . that would constitute a Triggering
4 Event” and the District had “performed in all material respects all agreements” with LPN, despite
5 knowing that it had failed to enter a bid on November 15, 2016, which constituted a breach of the
6 Agreements resulting in a Material Adverse Effect, thus rendering the breaches Triggering
7 Events.

8 165. The District’s false certification also breached the District’s warranty in Funding
9 Agreement § 4.13 that “[n]o representation or warranty of [the District] contained in any . . .
10 certificate or written statement furnished to LPN by or on behalf of [the District] . . . contains any
11 untrue statement of a material fact.”

12 166. The false certification resulted in a Material Adverse Effect because it prevented
13 LPN from enforcing the District’s reimbursement obligations under Funding Agreement §§ 9.1 &
14 9.2.

15 167. In light of the Triggering Events described in paragraphs 160–166 that resulted in
16 a Material Adverse Effect, LPN had “sole discretion” to “declare all or any portion of the Subsidy
17 Payments made on or prior to [the Triggering Event] date . . . immediately due and payable,”
18 requiring the District to deliver the amount due in “same day funds, free of any restriction or
19 condition, . . . to LPN not later than noon San Francisco time on the date due in the LPN
20 Account.” (§§ 9.1 & 9.2.B.)

21 168. Under Funding Agreement § 9.1, LPN notified the District on February 21, 2017,
22 that the \$3,375,000 in Subsidy Payments that LPN had paid as of that date were “immediately
23 due and payable.” Because the breaches described above in the seven Causes of Action and the
24 Triggering Events described in paragraphs 160-166 were willful, the District must return the
25 \$3,375,000 with interest at an 8% annual rate. (Funding Agreement § 9.1.)

26 169. The District has not paid LPN any portion of the \$3,375,000 or the 8% interest
27 thereon.

28 170. The District has therefore breached and continues to breach its Funding Agreement

1 obligation to reimburse LPN's \$3,375,000 in Subsidy Payments plus interest.

2 171. As a direct result of the District's continuing breach, LPN has suffered damages in
3 the amount of \$3,375,000 plus interest accruing at an 8% annual rate.

4 **NINTH CAUSE OF ACTION**

5 **Attorneys' Fees Under the Funding Agreement**

6 172. LPN hereby incorporates the preceding paragraphs 1 through 171 of this
7 Complaint by reference as if set forth here again in full.

8 173. The Funding Agreement is a valid and enforceable written agreement between the
9 District and LPN.

10 174. LPN has fully performed its duties under the Funding Agreement.

11 175. Section 10.2 of the Funding Agreement allows the prevailing party to recover its
12 reasonable attorneys' fees and costs in any litigation arising out of the Funding Agreement:

13 If either party to this Agreement shall bring any action for relief against the other,
14 declaratory or otherwise, arising out of this Agreement, the losing party shall pay
15 to the prevailing party reasonable attorneys' fees and costs incurred in bringing
16 such suit and/or enforcing any judgment granted therein. Any judgment or order
17 entered in such action shall contain a specific provision providing for the recovery
18 of attorneys' fees and costs incurred in enforcing such judgment.

19 176. This action arises out of the Funding Agreement. Thus, the prevailing party is
20 entitled to recover its reasonable attorneys' fees and expenses incurred in bringing this action and
21 enforcing any judgment.

22 **PRESENTATION OF CLAIMS**

23 177. The first breach of contract described in this Complaint occurred on
24 November 15, 2016, three months and six days before LPN presented its claims to the District.

25 178. LPN presented its claims to the District in compliance with Cal. Gov. Code § 910.

26 179. Specifically, the claims were delivered by hand and sent by certified mail from
27 San Francisco, California, to the District's Chancellor's Office and the District's Board of
28 Trustees on February 21, 2017. On the same date, the claims were sent by e-mail to Chancellor
Galatolo, Mr. Whitlock, and the members of the District Board of Trustees.

180. The claims included notice that LPN declared the Subsidy Payments made to date

1 immediately due and payable because a Triggering Event had occurred, which terminated LPN's
2 obligation to make further payments under the Funding Agreement.

3 181. The District did not provide a notice of insufficiency under Cal. Gov. Code
4 § 910.8 within 20 days after the claims were presented.

5 182. The District did not respond to LPN's claims by April 6, 2017. The District's
6 Board is therefore deemed to have rejected LPN's claims under Cal. Gov. Code § 912.4(c).

7 **DEMAND FOR JURY TRIAL**

8 Plaintiff LPN demands a jury trial in this action.

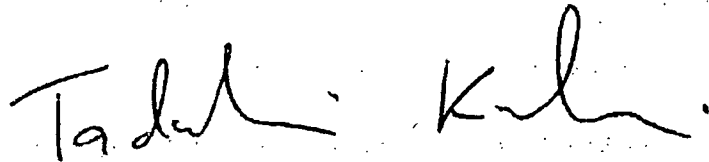
9 **PRAYER FOR RELIEF**

10 LPN prays for judgment against the District, as follows:

- 11 a. For compensatory damages in a sum to be determined at trial;
12 b. Directing the District to pay LPN's attorneys' fees and costs incurred in bringing
13 this action, in an amount to be determined upon an offer of proof to the Court, and
14 granting LPN leave of the Court to offer a report constituting such proof to the
15 Court;
16 c. For prejudgment interest; and
17 d. For such other and further relief as the court may deem proper.

18
19 DATED: April 10, 2017

Tadahiro Kaburaki (S.B. #311823)
B. Andrew Bednark (*pro hac vice* forthcoming)
O'MELVENY & MYERS LLP

20
21
22
23 

24 Tadahiro Kaburaki

25 Attorneys for LocusPoint Networks, LLC and LocusPoint II
26 KCSM, LLC

EXHIBIT A

EXECUTION VERSION

FUNDING AGREEMENT

DATED AS OF MAY 16, 2013

BETWEEN

SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT

and

LOCUSPOINT NETWORKS, LLC

TABLE OF CONTENTS

	Page No.
SECTION 1. DEFINITIONS	1
1.1 Certain Defined Terms	1
1.2 Accounting Terms; Utilization of GAS for Purposes of Calculations Under Agreement	7
1.3 Other Definitional Provisions and Rules of Construction	7
SECTION 2. SUBSIDY PAYMENTS	8
2.1 Making of Subsidy Payments	8
SECTION 3. CONDITIONS TO SUBSIDY PAYMENTS.....	8
3.1 Conditions to Effective Date	8
3.2 Conditions to All Subsidy Payments	10
SECTION 4. REPRESENTATIONS AND WARRANTIES OF SMCCCD	10
4.1 Organization, Powers, Qualification, Good Standing.....	11
4.2 Effectiveness of Funding Documents	12
4.3 Financial Condition	12
4.4 No Material Adverse Change; No Interference	12
4.5 Title to Properties; Liens; Real Property	12
4.6 Litigation; Adverse Facts.....	13
4.7 Payment of Taxes	13
4.8 Performance of Agreements; Material Contracts	13
4.9 Employee Benefit Plans; Employee Matters	13
4.10 Certain Fees	13
4.11 Environmental Protection	14
4.12 Proceeds.....	14
4.13 Disclosure	14
SECTION 5. REPRESENTATIONS AND WARRANTIES OF LPN	14
5.1 Organization, Standing, Authority.....	14
5.2 Authorization and Binding Obligation	15
5.3 Absence of Conflicting Agreements.....	15
5.4 Availability of Funds	15
SECTION 6. AFFIRMATIVE COVENANTS.....	15
6.1 Financial Statements and Other Reports.....	15
6.2 Existence, etc	17
6.3 Payment of Taxes and Claims; Tax Returns.....	17
6.4 Maintenance of Properties; Insurance	17
6.5 Compliance with Laws, etc.	17
6.6 Environmental Matters	17
6.7 Proceeds Account	17
6.8 Conduct of Business	17
6.9 Performance of Obligations.....	17
6.10 Use of Proceeds	17
6.11 Access to Facilities	18
SECTION 7. NEGATIVE COVENANTS	18
7.1 Indebtedness	18
7.2 Liens and Related Matters	18

TABLE OF CONTENTS
(Continued)

	Page No.
7.3	Restriction on Fundamental Changes; Asset Sales.....18
SECTION 8.	NEGATIVE COVENANTS DURING A TRIGGERING EVENT OR AFTER THE FUNDING TERMINATION DATE18
8.1	Indebtedness18
8.2	Liens and Related Matters18
8.3	Restriction on Fundamental Changes; Asset Sales.....19
SECTION 9.	REIMBURSEMENT OBLIGATIONS.....19
9.1	Triggering Events19
9.2	Application of Payments; Payments Generally; Calculation of Interest21
SECTION 10.	MISCELLANEOUS21
10.1	Successors and Assigns21
10.2	Expenses22
10.3	Indemnity.....22
10.4	Amendments and Waivers; Termination.....22
10.5	Independence of Covenants.....22
10.6	Notices; Effectiveness of Signatures23
10.7	Survival of Representations, Warranties and Agreements23
10.8	Failure or Indulgence Not Waiver; Remedies Cumulative.....23
10.9	Payments Set Aside23
10.10	Severability.....23
10.11	Damage Waiver23
10.12	Applicable Law.....24
10.13	Construction of Agreement; Nature of Relationship.....24
10.14	Consent to Jurisdiction and Service of Process24
10.15	Confidentiality; Public Disclosure.....24
10.16	Counterparts; Effectiveness.....25

FUNDING AGREEMENT

This **FUNDING AGREEMENT** is dated as of May 16, 2013 and entered into by and between **SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT**, a California community college district ("**SMCCCD**"), and **LOCUSPOINT NETWORKS, LLC**, a Delaware limited liability company ("**LPN**").

RECITALS

WHEREAS, SMCCCD operates full-power noncommercial educational television station KCSM-TV (RF Channel 43), San Mateo, California (FCC Facility ID No. 58912) (the "**Station**") and holds the FCC License and other Governmental Authorizations for the operation of the Station; and

WHEREAS, LPN, at the request of SMCCCD, has agreed to partially fund the continued operation of the Station in consideration of the grant by SMCCCD of rights set forth in the Option Agreement and of the grant by SMCCCD of the rights set forth in this Agreement and the other Funding Documents;

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, SMCCCD and LPN agree as follows:

SECTION 1. DEFINITIONS

1.1 **Certain Defined Terms**. The following terms used in this Agreement shall have the following meanings:

"Affiliate", as applied to any Person, means any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling", "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise.

"Agreement" means this Funding Agreement dated as of May 16, 2013.

"Authorizing Resolution" has the meaning assigned to that term in subsection 4.2A.

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy", as now and hereafter in effect, or any successor statute.

"Bid Management Agreement" means that certain Bid Management Agreement by and among SMCCCD and LPN dated as of May 16, 2013.

"Bid Management Compensation" means the aggregate amount payable to LPN pursuant to Article VI of the Bid Management Agreement.

"Business Day" means any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of California or is a day on which banking institutions located in such state are authorized or required by law or other governmental action to close.

“Cash” means money, currency or a credit balance in a deposit account.

“Collateral Documents” means the Security Agreement, the Control Agreement and all other instruments or documents delivered by SMCCCD pursuant to this Agreement in order to grant to LPN a Lien on the Proceeds.

“Communications Act” means the Communications Act of 1934, as amended, and all rules, regulations, orders, written policies and decisions of the FCC thereunder or any successor statute or statutes, as from time to time in effect.

“Communications Regulatory Authority” means the FCC, any State PUC and any current or future Government Authority which has the specific jurisdiction to regulate the conduct of wireless or broadcast licensees or to otherwise regulate the communications activities of SMCCCD.

“Compliance Certificate” means a certificate substantially in the form of Exhibit I annexed hereto.

“Contingent Obligation”, as applied to any Person, means any direct or indirect liability, contingent or otherwise, of that Person (i) with respect to any Indebtedness, lease, dividend or other obligation of another if the primary purpose or intent thereof by the Person incurring the Contingent Obligation is to provide assurance to the obligee of such obligation of another that such obligation of another will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such obligation will be protected (in whole or in part) against loss in respect thereof, or (ii) with respect to any letter of credit issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings. Contingent Obligations shall include (a) the direct or indirect guaranty, endorsement (otherwise than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the obligation of another, (b) the obligation to make take-or-pay or similar payments if required regardless of non-performance by any other party or parties to an agreement, and (c) any liability of such Person for the obligation of another through any agreement (contingent or otherwise) (1) to purchase, repurchase or otherwise acquire such obligation or any security therefor, or to provide funds for the payment or discharge of such obligation (whether in the form of loans, advances, stock purchases, capital contributions or otherwise) or (2) to maintain the solvency or any balance sheet item, level of income or financial condition of another if, in the case of any agreement described under subclauses (1) or (2) of this sentence, the primary purpose or intent thereof is as described in the preceding sentence. The amount of any Contingent Obligation shall be equal to the amount of the obligation so guaranteed or otherwise supported or, if less, the amount to which such Contingent Obligation is specifically limited.

“Contractual Obligation”, as applied to any Person, means any provision of any Security issued by that Person or of any material indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

“Control Agreement” means an agreement, satisfactory in form and substance to LPN and executed by the financial institution at which the Proceeds Account is maintained, for the purposes of holding the Proceeds pursuant to which such financial institution confirms and acknowledges LPN's security interest in such account.

“Copyright Act” means the Copyright Act of 1976, as amended, including without limitation, all provisions of Title 17 of the United States Code and the rules and regulations thereunder, in each case as from time to time in effect.

"Dollars" and the sign "\$" mean the lawful money of the United States of America.

"Effective Date" means May 16, 2013.

"Employee Benefit Plan" means any "employee benefit plan" as defined in Section 3(3) of ERISA (whether or not subject to ERISA) which is or was maintained or contributed to by SMCCCD with respect to the Station.

"Environmental Claim" means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any Government Authority or any other Person, arising (i) pursuant to or in connection with any actual or alleged violation of any Environmental Law, (ii) in connection with any Hazardous Materials or any actual or alleged Hazardous Materials Activity, or (iii) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment.

"Environmental Laws" means any and all current or future statutes, ordinances, orders, rules, regulations, guidance documents, judgments, Governmental Authorizations, or any other requirements of any Government Authority relating to (i) environmental matters, including those relating to any Hazardous Materials Activity, (ii) the generation, use, storage, transportation or disposal of Hazardous Materials, or (iii) occupational safety and health, industrial hygiene, land use or the protection of human, plant or animal health or welfare, in any manner applicable to SMCCCD with respect to the Station or any Facility.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor thereto.

"Facilities" means any and all real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or heretofore owned, leased, operated or used by SMCCCD with respect to the Station.

"FCC" means the Federal Communications Commission and any successor governmental agency performing functions similar to those performed by the Federal Communications Commission on the date hereof.

"FCC License" means the Noncommercial Educational broadcast television license, as such term is defined in the rules, regulations or policies promulgated by the FCC, used in connection with the operation of the Station.

"FCC Rules" has the meaning assigned to that term in subsection 4.1D.

"First Priority" means, with respect to any Lien purported to be created in the Proceeds, pursuant to any Collateral Document, that (i) such Lien is perfected and has priority over any other Lien on such Proceeds and (ii) such Lien is the only Lien (other than Permitted Encumbrances) to which such Collateral is subject.

"Fiscal Year" means the fiscal year of SMCCCD ending on June 30 of each calendar year.

"Funding Date" means the date of funding of a Subsidy Payment.

“Funding Documents” means this Agreement, the Option Agreement, the Bid Management Agreement and the Collateral Documents.

“Funding Termination Date” means the later of July 1, 2017 and the date upon which LPN is scheduled to make the last Extension Subsidy Payment (as such term is defined in the Option Agreement), if any.

“GAS” means, subject to the limitations of the application thereof set forth in subsection 1.2, the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States, in each case as the same are applicable to the circumstances as of the date of determination.

“Governing Body” means the board of directors or other body having the power to direct or cause the direction of the management and policies of a Person that is a Government Authority, corporation, partnership, trust or limited liability company.

“Government Authority” means the government of the United States or any other nation, or any state, regional or local political subdivision or department thereof, and any other governmental or regulatory agency, authority, body, commission, central bank, board, bureau, organ, court, instrumentality or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, in each case whether federal, state, local or foreign (including the FCC, the County of San Mateo, the State of California and supra-national bodies such as the European Union or the European Central Bank).

“Governmental Authorization” means any permit, license, registration, authorization, plan, directive, accreditation, consent, order or consent decree of or from, or notice to, any Government Authority (including the FCC, the County of San Mateo and the State of California).

“Hazardous Materials” means: (i) any chemical, material or substance at any time defined as or included in the definition of “hazardous substances”, “hazardous wastes”, “hazardous materials”, “extremely hazardous waste”, “acutely hazardous waste”, “radioactive waste”, “biohazardous waste”, “pollutant”, “toxic pollutant”, “contaminant”, “restricted hazardous waste”, “infectious waste”, “toxic substances”, or any other term or expression intended to define, list or classify substances by reason of properties harmful to health, safety or the indoor or outdoor environment (including harmful properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, “TCLP toxicity” or “EP toxicity” or words of similar import under any applicable Environmental Laws); (ii) any oil, petroleum, petroleum fraction or petroleum derived substance; (iii) any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources; (iv) any flammable substances or explosives; (v) any radioactive materials; (vi) any asbestos-containing materials; (vii) urea formaldehyde foam insulation; (viii) electrical equipment which contains any oil or dielectric fluid containing polychlorinated biphenyls; (ix) pesticides; and (x) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Government Authority or which may or could pose a hazard to the health and safety of the owners, occupants or any Persons in the vicinity of any Facility or to the indoor or outdoor environment.

“Hazardous Materials Activity” means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Materials, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Materials, and any corrective action or response action with respect to any of the foregoing.

"Indebtedness", as applied to any Person, means (i) all indebtedness for borrowed money, (ii) that portion of obligations with respect to capital leases that is properly classified as a liability on a balance sheet in conformity with GAS, (iii) notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money, (iv) any obligation owed for all or any part of the deferred purchase price of property or services, which purchase price is (a) due more than six months from the date of incurrence of the obligation in respect thereof or (b) evidenced by a note or similar written instrument, (v) all indebtedness secured by any Lien on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby shall have been assumed by that Person or is nonrecourse to the credit of that Person and (vi) all Contingent Obligations of such Person in respect of Indebtedness of others of the kinds referred to in clauses (i) through (v) above.

"Indemnitee" has the meaning assigned to that term in subsection 10.3.

"Joint Venture" means a joint venture, partnership or other similar arrangement, whether in corporate, partnership or other legal form.

"Lien" means any lien, mortgage, pledge, assignment, security interest, charge or encumbrance of any kind (including any conditional sale or other title retention agreement, any lease in the nature thereof, and any agreement to give any security interest) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing.

"Losses" has the meaning assigned to that term in subsection 10.3.

"LPN" has the meaning assigned to that term in the introductory paragraph to this Agreement.

"LPN Account" means an account as may be designated in writing by LPN from time to time.

"LPN Indemnified Party" has the meaning assigned to that term in subsection 10.3.

"Material Adverse Effect" means (i) a material adverse effect upon the business, operations, properties, assets, condition (financial or otherwise) or the operation of the Station or (ii) the impairment of the ability of SMCCCD to perform, or of LPN to enforce, the Reimbursement Obligations or any other material obligations under any Funding Document.

"Material Contract" means any contract or other arrangement to which SMCCCD is a party (other than the Funding Documents) relating to or used in the operation of the Station for which breach, nonperformance, cancellation or failure to renew could have a Material Adverse Effect.

"Multiemployer Plan" means any Employee Benefit Plan that is a "multiemployer plan" as defined in Section 3(37) of ERISA.

"Officer" means the president, chief executive officer, a vice president, chief financial officer, treasurer, general partner (if an individual), managing member (if an individual) or other individual appointed by the Governing Body or the Organizational Documents of a Government Authority, corporation, partnership, trust or limited liability company to serve in a similar capacity as the foregoing.

“Officer’s Certificate”, as applied to any Person, means a certificate executed on behalf of such Person by one or more Officers of such Person or one or more Officers of a general partner or a managing member of such Person.

“Option Agreement” means that certain Put/Call Option Agreement by and among SMCCCD and LPN dated as of May 16, 2013.

“Option Termination Date” means December 31, 2025.

“Organizational Documents” means the statute or documents (including Bylaws, if applicable) pursuant to which a Person (other than a natural Person) is organized.

“Pension Plan” means any Employee Benefit Plan, other than a Multiemployer Plan, in the nature of a “defined benefit” pension plan.

“Person” means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, Joint Ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and Government Authorities.

“Potential Triggering Event” means a condition or event that, after notice or lapse of time or both, would constitute a Triggering Event.

“Proceedings” means any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration.

“Proceeds” means the proceeds from an Auction Sale, Call Option Sale or Put Option Sale, as such terms are defined the Option Agreement.

“Proceeds Account” has the meaning set forth in subsection 6.7.

“Reimbursement Obligations” means all obligations of every nature of SMCCCD from time to time owed to LPN under the Funding Documents, whether for reimbursement of any Subsidy Payment, interest, expenses, indemnification or otherwise.

“Release” means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Materials into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Materials), including the movement of any Hazardous Materials through the air, soil, surface water or groundwater.

“Securities” means any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated, certificated or uncertificated, or otherwise, or in general any instruments commonly known as “securities” or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

“Security Agreement” means the Security Agreement executed and delivered on the Effective Date, substantially in the form of Exhibit II annexed hereto, granting LPN a security interest in the Proceeds.

“SMCCCD” has the meaning assigned to that term in the introduction to this Agreement.

“SMCCCD Indemnified Party” has the meaning assigned to that term in subsection 10.3 of this Agreement.

“State Law” means any state law pertaining to or regulating intrastate and local telecommunications services, or any successor statute or statutes thereto, and all State Regulations pursuant to such State Law, in each case as from time to time in effect.

“State PUC” means any state public utility commission or any other state commission, agency, department, board or authority with responsibility for regulating intrastate and local telecommunications services.

“State Regulations” means all rules, regulations, written policies, orders and decisions of any State PUC.

“Station” has the meaning assigned to that term in the recitals to this Agreement.

“Subsidiary”, with respect to any Person, means any corporation, partnership, trust, limited liability company, association, Joint Venture or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the members of the Governing Body is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other subsidiaries of that Person or a combination thereof.

“Subsidy Payment” has the meaning assigned to that term in subsection 2.1A.

“Triggering Event” means each of the events set forth in subsection 9.1.

“UCC” means the Uniform Commercial Code as in effect in any applicable jurisdiction.

“Willful Breach” has the meaning assigned to that term in subsection 9.1.

1.2 Accounting Terms; Utilization of GAS for Purposes of Calculations Under Agreement. Except as otherwise expressly provided in this Agreement, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAS. Financial statements and other information required to be delivered by SMCCCD to LPN pursuant to clauses (ii), (iii) and (viii) of subsection 5.1 shall be prepared in accordance with GAS as in effect at the Effective Date. Calculations in connection with the definitions, covenants and other provisions of this Agreement shall utilize GAS as in effect on the Effective Date. If at any time any change in GAS would affect the computation of any requirement set forth in any Funding Document, and SMCCCD or LPN shall so request, SMCCCD and LPN shall negotiate in good faith to amend such requirement to preserve the original intent thereof in light of such change in or GAS provided that, until so amended, such requirement shall continue to be computed in accordance with GAS prior to such change therein.

1.3 Other Definitional Provisions and Rules of Construction. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. References to “Sections” and “subsections” shall be to Sections and subsections, respectively, of this Agreement unless otherwise specifically provided. Section and subsection headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect. The use in any of the Funding

Documents of the word "include" or "including", when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. Unless otherwise expressly provided herein, references to Organizational Documents, agreements (including the Funding Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto.

SECTION 2. SUBSIDY PAYMENTS

2.1 Making of Subsidy Payments.

A. Subsidy Payments. Subject to the terms and conditions of this Agreement and in reliance upon the representations and warranties of SMCCCD herein set forth, LPN hereby agrees to disburse to SMCCCD from time to time during the period from and after the Effective Date to and including the Funding Termination Date an amount not exceeding the sum of (x) \$3,600,000, (y) the aggregate amount of any Extension Subsidy Payments (as such term is defined in the Option Agreement), and (z) the Bid Management Compensation (collectively, the "**Subsidy Payments**") to be used for the purposes identified in subsection 6.10. Subject to the terms and conditions of this Agreement, (i) the Subsidy Payments shall be made in sixteen (16) equal installments (which initial number of Subsidy Payments may be increased by up to four (4) additional Subsidy Payments in the circumstances described in Section 2(b) of the Option Agreement), (ii) each Subsidy Payment shall be in an amount equal to \$225,000 (which shall be the amount net of the Bid Management Compensation then payable to LPN pursuant to the terms of the Bid Management Agreement), (iii) the first Subsidy Payment shall be made on July 1, 2013, and (iv) each subsequent Subsidy Payment shall be made on the first day of each October, January, April and July (commencing with October 1, 2013). Any obligation of LPN to make Subsidy Payments shall expire immediately and without further action on the Funding Termination Date if the Subsidy Payments are not made on or before such date.

B. Funding of Subsidy Payments. Subject to the satisfaction or waiver of the conditions precedent specified in subsections 3.1 and 3.2, LPN shall make the first Subsidy Payment to SMCCCD on July 1, 2013 by wiring the payment to the SMCCCD Account. Subject to the satisfaction or waiver after July 1, 2013 of the conditions precedent specified in subsection 3.2, LPN shall make each subsequent Subsidy Payment to SMCCCD on the applicable Funding Date by wiring the payment to the SMCCCD Account. In accordance with Section 1(b) of the Option Agreement, in the event that LPN fails to make any Subsidy Payment within three days of its due date, the LPN Share, as defined and applied in the Option Agreement, shall be reduced by an amount equal to 2.28125% multiplied by the Gross Auction Proceeds or Gross Sale Proceeds, as applicable, for each such failure, e.g., from 36.5% to 34.21875% in the case of one late payment.

SECTION 3. CONDITIONS TO SUBSIDY PAYMENTS

The obligation of LPN to make Subsidy Payments hereunder is subject to the satisfaction of the following conditions:

3.1 Conditions to Effective Date. The effectiveness of this Agreement on the Effective Date is subject to prior or concurrent satisfaction of the following conditions:

A. SMCCCD Documents. On or before the Effective Date, SMCCCD shall deliver to LPN the following, each, unless otherwise noted, dated the Effective Date:

(i) A copy of or reference to the current provisions of California Law that authorize and empower SMCCCD;

(ii) A copy of the minutes of a meeting of the Board of Directors of SMCCCD approving and authorizing the execution, delivery and performance of the Funding Documents to which it is a party, certified as of the Effective Date by an officer of SMCCCD;

(iii) Executed copies of the Funding Documents to which SMCCCD is party;
and

(iv) Such other documents as LPN may reasonably request.

B. Representations and Warranties; Performance of Agreements. SMCCCD shall have delivered to LPN an Officer's Certificate, in form and substance satisfactory to LPN, to the effect that the representations and warranties in Section 4 are true, correct and complete in all material respects on and as of the Effective Date to the same extent as though made on and as of that date (or, to the extent such representations and warranties specifically relate to an earlier date, that such representations and warranties were true, correct and complete in all material respects on and as of such earlier date) and that SMCCCD shall have performed in all material respects all agreements and satisfied all conditions which this Agreement provides shall be performed or satisfied by it on or before the Effective Date except as otherwise disclosed to and agreed to in writing by LPN; provided that, if a representation and warranty, covenant or condition is qualified as to materiality, the applicable materiality qualifier set forth above shall be disregarded with respect to such representation and warranty, covenant or condition for purposes of this condition.

C. Opinions of Counsel to SMCCCD. LPN shall have received originally executed copies of the written opinion of Schwartz, Woods & Miller, special FCC counsel for SMCCCD, in form and substance reasonably satisfactory to LPN and its counsel, dated as of the Effective Date and setting forth substantially such matters as LPN may reasonably request.

D. Security Interests in Proceeds. LPN shall have received evidence satisfactory to it that SMCCCD shall have taken or caused to be taken all such actions, including executing and delivering the Security Agreement and the Control Agreement and any other agreements, documents and instruments, and making all such filings and recordings that may be necessary or, in the reasonable opinion of LPN desirable, in order to create in favor of LPN a valid and (upon such filing and recording) perfected First Priority security interest in the Proceeds to the extent of LPN's interest therein.

E. Necessary Governmental Authorizations and Consents; Expiration of Waiting Periods, Etc. SMCCCD shall have obtained all Governmental Authorizations and all consents of other Persons, in each case that are necessary or advisable in connection with the transactions contemplated by the Funding Documents on the Effective Date. Each such Governmental Authorization and consent shall be in full force and effect, except in a case where the failure to obtain or maintain a Governmental Authorization or consent, either individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. All applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain, prevent or otherwise impose adverse conditions on the financing. No action, request for stay, petition for review or rehearing, reconsideration, or appeal with respect to any of the foregoing shall be pending, and the time

for any applicable Government Authority to take action to set aside its consent on its own motion shall have expired.

F. Evidence of Insurance. LPN shall have received a certificate from SMCCCD's insurance broker or other evidence satisfactory to it that all insurance required to be maintained pursuant to subsection 6.4 is in full force and effect.

G. FCC License. LPN shall be satisfied that all rights and remedies of LPN under the Funding Documents shall not conflict with or cause a breach or default under the FCC License.

3.2 Conditions to All Subsidy Payments. The obligation of LPN to make each Subsidy Payment on the applicable Funding Date is subject to the following conditions precedent:

A. As of such Funding Date:

(i) The representations and warranties contained herein and in the other Funding Documents shall be true, correct and complete in all material respects on and as of that Funding Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true, correct and complete in all material respects on and as of such earlier date; provided, that, if a representation and warranty is qualified as to materiality, the materiality qualifier set forth above shall be disregarded with respect to such representation and warranty for purposes of this condition;

(ii) No event shall have occurred and be continuing or would result from the making of such Subsidy Payment that would constitute a Triggering-Event or a Potential Triggering Event;

(iii) SMCCCD shall have performed in all material respects all agreements and satisfied all conditions which this Agreement and each other Funding Agreement provides shall be performed or satisfied by it on or before that Funding Date;

(iv) No order, judgment or decree of any arbitrator or Government Authority shall purport to enjoin or restrain LPN from making the Subsidy Payment to be made by it on that Funding Date;

(v) No FCC License will have been forfeited or materially impaired as of such Funding Date for any reason, including as a result of or in connection with any Funding Document or the transactions contemplated hereby or thereby;

(vi) No Material Adverse Effect shall have occurred as of such Funding Date;

(vii) LPN shall have received before such Funding Date a duly executed Compliance Certificate attesting to the matters set forth in this subsection 3.2A signed by a duly authorized Officer of SMCCCD; and

(viii) SMCCCD shall have delivered such other certificates or documents that LPN shall reasonably request, in form and substance satisfactory to LPN.

SECTION 4. REPRESENTATIONS AND WARRANTIES OF SMCCCD

In order to induce LPN to enter into this Agreement and to make the Subsidy Payments, each of SMCCCD represents and warrants to LPN:

4.1 Organization, Powers, Qualification, Good Standing.

A. Organization and Powers. SMCCCD is a California community college district duly organized, validly existing and in good standing under the laws of the State of California. SMCCCD has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Funding Documents to which it is a party and to carry out the transactions contemplated thereby.

B. Qualification and Good Standing. SMCCCD is qualified to do business and in good standing in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations.

C. Conduct of Business. SMCCCD is operating the Station in the manner required by subsection 6.8.

D. FCC License and other Governmental Authorizations. Schedule 4.1D annexed hereto accurately and completely lists the FCC License and other Governmental Authorizations that have been granted or assigned to SMCCCD by the FCC, any other Communications Regulatory Authority or any other Governmental Authority, including all Governmental Authorizations for the operation of the Station, and the FCC License and other Governmental Authorizations (a) are in full force and effect in all respects and (b) comprise all of the licenses, permits, approvals and authorizations necessary under the Communications Act and the rules, regulations and policies of the FCC (the "FCC Rules") for the operation of the Station as presently operated and conducted. The FCC License is not subject to any restriction or condition other than those set forth in the FCC License. Schedule 4.1D also accurately and completely lists all agreements, if any, for the use of public utility facilities in connection with the Station. Except as specified in Schedule 4.1D annexed hereto, neither the FCC License nor any other Governmental Authorization issued to SMCCCD with regard to the Station has a term which will expire prior to the Option Termination Date. SMCCCD does not have any knowledge of the occurrence of any event or the existence of any circumstance which is likely to lead to the revocation, suspension, amendment or non-renewal of the FCC License or other Governmental Authorization, and there are no applications, investigations, complaints, objections, petitions or proceedings pending or, to SMCCCD's knowledge, threatened before the FCC or any other Governmental Authority relating to the Station, except for proceedings of general applicability to television broadcast stations. The FCC License and all other Governmental Authorizations used by SMCCCD are held by it.

E. Communications Act and State Law. SMCCCD has duly filed in a timely manner all reports, forms, applications and statements required to be filed by SMCCCD with the FCC or any other Governmental Authority or required by the FCC or any other Governmental Authority to be maintained by SMCCCD with respect to the Station since the dates SMCCCD has operated the Station, and they are in all material respects accurate and complete and in compliance with the Communications Act and State Law, including, without limitation, the FCC Rules and the rules and regulations of any other Communications Regulatory Authority. The conduct of the business and operations of the Station are in compliance in all respects with the FCC's radiation standards applicable to the Station. The conduct of the business and operations of the Station are in compliance in all material respects with all applicable engineering and other standards required to be met under applicable federal, state and local laws, rules, regulations, requirements and policies, including FCC Rules and the Communications Act,

and are otherwise in compliance in all material respects with all applicable federal, state and local laws, rules, regulations, requirements and policies, including FCC Rules and the Communications Act. SMCCCD is not liable to any Person for material copyright infringement under the Copyright Act as a result of its business operations.

4.2 **Effectiveness of Funding Documents.**

A. **Authorization of Funding Documents.** The execution, delivery and performance of the Funding Documents has been duly authorized by all necessary action on the part of SMCCCD.

B. **No Conflict.** The execution, delivery and performance by SMCCCD of the Funding Documents and the consummation of the transactions contemplated by the Funding Documents, as applicable, do not and will not (i) violate any provision of any law or any governmental rule or regulation applicable to SMCCCD or any order, judgment or decree of any court or other Government Authority binding on SMCCCD, (ii) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any Contractual Obligation of SMCCCD, (iii) result in or require the creation or imposition of any Lien upon any of the properties or assets of SMCCCD (other than any Liens created under any of the Funding Documents in favor of LPN), or (iv) require any approval or consent of any Person under any Contractual Obligation of SMCCCD.

C. **Governmental Consents.** The execution, delivery and performance by SMCCCD of the Funding Documents to which it is party, and the consummation of the transactions contemplated by the Funding Documents, as applicable, do not and will not require any Governmental Authorization other than that of SMCCCD.

D. **Binding Obligation.** Each of the Funding Documents to which it is party has been duly executed and delivered by SMCCCD and is the legally valid and binding obligation of SMCCCD, enforceable against SMCCCD in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

4.3 **Financial Condition.** SMCCCD does not have (and will not have) any Indebtedness, contingent liability or liability for taxes, long-term lease or unusual forward or long-term commitment that, as of any Funding Date, is not reflected in the most recent financial statements delivered to LPN pursuant to subsection 5.1 or the notes thereto and that, in any such case, is material in relation to the business, operations, properties, assets, condition (financial or otherwise) or prospects of SMCCCD with respect to the operation of the Station.

4.4 **No Material Adverse Change; No Interference.** Since June 30, 2012, no event or change has occurred that has resulted in a Material Adverse Effect. There is currently no legal or regulatory proceeding, including interventions by the public or any Government Authority pending, or to the knowledge of SMCCCD threatened, that could reasonably be expected to materially frustrate, impair or limit the consummation of any of the transactions contemplated by or under the Funding Documents (including the participation by SMCCCD in, or the assignment of the FCC License or surrender of the spectrum used in the operation of the Station pursuant to, the Auction, a Call Option Sale or Put Option Sale (as such terms are defined in the Option Agreement)) or otherwise to have a Material Adverse Effect.

4.5 **Title to Properties; Liens; Real Property.** SMCCCD has (i) good, sufficient and legal title to (in the case of fee interests in real property), (ii) valid leasehold interests in (in the case of leasehold interests in real or personal property), or (iii) good title to (in the case of all other personal

property), all of its properties and assets used in the operation of the Station and reflected in the most recent financial statements delivered pursuant to subsection 5.1, in each case except for assets disposed of since the date of such financial statements as permitted under subsections 7.3 and 8.3. Except as permitted by this Agreement, all such properties and assets are free and clear of Liens. Schedule 4.5 annexed hereto contains a true, accurate and complete list of all leases, subleases or assignments of leases (together with all amendments, modifications, supplements, renewals or extensions of any thereof) of real property used in connection with the operation of the Station. Each agreement listed on Schedule 4.5 as a result of the immediately preceding sentence is in full force and effect and SMCCCD does not have knowledge of any default that has occurred and is continuing thereunder, and each such agreement constitutes the legally valid and binding obligation of SMCCCD, enforceable against SMCCCD in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles.

4.6 Litigation; Adverse Facts. There are no Proceedings (whether or not purportedly on behalf of SMCCCD) at law or in equity, or before or by any court or other Government Authority (including any Environmental Claims) that are pending or, to the knowledge of SMCCCD, threatened against or affecting SMCCCD with respect to the Station or any property of SMCCCD used in connection with the Station which, if adversely determined, has a reasonable possibility after giving effect to the coverage and policy limits of insurance policies issued to SMCCCD, of giving rise to a Material Adverse Effect. SMCCCD is not (i) in material violation of any applicable laws (including Environmental Laws), or (ii) subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or other Government Authority.

4.7 Payment of Taxes. SMCCCD is not subject to taxation other than with respect to employment and sales and use taxes. Except to the extent permitted by subsection 5.3, all tax returns and reports of SMCCCD required to be filed by it have been timely filed, and all taxes shown on such tax returns to be due and payable and all assessments, fees and other governmental charges upon SMCCCD and upon their respective properties, assets, income, businesses and franchises that are due and payable have been paid when due and payable. SMCCCD does not know of any proposed tax assessment against it that is not being actively contested by SMCCCD in good faith and by appropriate proceedings; provided that such reserves or other appropriate provisions, if any, as shall be required in conformity with GAS shall have been made or provided therefor.

4.8 Performance of Agreements; Material Contracts. SMCCCD is not in material default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations with respect to the Station, and no condition exists that, with the giving of notice or the lapse of time or both, would constitute such a material default. Schedule 4.8 contains a true, correct and complete list of all the Material Contracts in effect. Except as described on Schedule 4.8, all such Material Contracts are in full force and effect and no material defaults currently exist thereunder.

4.9 Employee Benefit Plans; Employee Matters. With respect to the Station, SMCCCD is in compliance in all material respects with all applicable provisions and requirements of each Employee Benefit Plan and with the requirements of any statutes, orders, rules and regulations which are applicable to each Employee Benefit Plan, and has performed in all material respects all its obligations under each Employee Benefit Plan. SMCCCD in connection with the Station does not have any potential liability under any Pension Plan or any Multiemployer Plan. With respect to the Station, there is no strike or work stoppage in existence or threatened involving SMCCCD.

4.10 Certain Fees. No broker's or finder's fee or commission will be payable with respect to this Agreement or any of the transactions contemplated hereby because of any representation or agreement by SMCCCD, which hereby indemnifies LPN against, and agrees that it will hold LPN harmless from, any claim, demand or liability for any such broker's or finder's fees alleged to have been incurred in connection herewith or therewith and any expenses (including reasonable fees, expenses and disbursements of counsel) arising in connection with any such claim, demand or liability.

4.11 Environmental Protection. With respect to the Station, SMCCCD and its Facilities or operations are not subject to any outstanding written order, consent decree or settlement agreement concerning the Station with any Person relating to (a) any Environmental Law, (b) any Environmental Claim, or (c) any Hazardous Materials Activity that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect; SMCCCD has not received any letter or request for information under Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9604) or any comparable state law; there are and, to SMCCCD's knowledge, have been no conditions, occurrences, or Hazardous Materials Activities that could reasonably be expected to form the basis of an Environmental Claim against SMCCCD that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect; neither SMCCCD nor, to SMCCCD's knowledge, any predecessor of SMCCCD has filed any notice under any Environmental Law indicating past or present treatment of Hazardous Materials at any Facility, and none of SMCCCD's operations involves the generation, transportation, treatment, storage or disposal of hazardous waste, as defined under 40 C.F.R. Parts 260-270 or any state equivalent; and SMCCCD is in compliance with all current or reasonably foreseeable future requirements pursuant to or under Environmental Laws would not, individually or in the aggregate, be reasonably expected to result in a Material Adverse Effect

4.12 Matters Relating to Proceeds. No authorization, approval or other action by, and no notice to or filing with, any Government Authority is required for either the grant by SMCCCD of the Lien purported to be created in favor of LPN in its share of the Proceeds or (ii) the exercise by LPN of any rights or remedies in respect of its security interest in its share of the Proceeds or under the Control Agreement. Except such as may have been filed in favor of LPN as contemplated by the Security Agreement, no effective UCC financing statement, or other instrument similar in effect covering all or any part of the Proceeds Account is on file in any filing or recording office. All information supplied to LPN by or on behalf of SMCCCD with respect to the Proceeds Account is accurate and complete in all respects.

4.13 Disclosure. No representation or warranty of SMCCCD contained in any Funding Document or in any other document, certificate or written statement furnished to LPN by or on behalf of SMCCCD for use in connection with the transactions contemplated by this Agreement contains any untrue statement of a material fact or omits to state a material fact (known to SMCCCD, in the case of any document not furnished by it) necessary in order to make the statements contained herein or therein not misleading in light of the circumstances in which the same were made. Any projections and pro forma financial information contained in such materials are based upon good faith estimates and assumptions believed by SMCCCD to be reasonable at the time made, it being recognized by LPN that such projections as to future events are not to be viewed as facts and that actual results during the period or periods covered by any such projections may differ from the projected results. There are no facts known (or which should upon the reasonable exercise of diligence be known) to SMCCCD (other than matters of a general economic nature) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect and that have not been disclosed herein or in such other documents, certificates and statements furnished to LPN for use in connection with the transactions contemplated hereby.

SECTION 5. REPRESENTATIONS AND WARRANTIES OF LPN

In order to induce SMCCCD to enter into this Agreement, LPN represents and warrants to SMCCCD:

5.1 Organization, Standing and Authority. LPN is a limited liability corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, with all requisite power under its organization documents to enter into and perform this Agreement and the transactions contemplated hereby.

5.2 Authorization and Binding Obligation. The execution, delivery, and performance by LPN of the Funding Documents, and the consummation by LPN of the transactions contemplated hereby, have been duly authorized by all necessary corporate action. This Agreement has been duly executed and delivered by LPN. This Agreement constitutes the legal, valid, and binding obligation of LPN, enforceable against LPN in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting the rights of creditors generally or by general principles of equity.

5.3 Absence of Conflicting Agreements. The execution, delivery, and performance by LPN of this Agreement (with or without the giving of notice, the lapse of time, or both) (i) do not require the consent of any third party; (ii) will not conflict with, result in a breach of, or constitute a default under, any applicable law, judgment, order, rule or regulation of any court or governmental unit to which LPN is a party or by which LPN is bound; and (iii) will not conflict with, constitute grounds for termination of, result in a breach of, constitute a default under, or accelerate or permit the acceleration of any performance required by, the terms of, any agreement, instrument, license, or permit to which LPN is a party or by which LPN may be bound.

5.4 Availability of Funds: LPN has cash available or has existing borrowing facilities that are available (and not subject to conditions precedent or other restrictions) that together are sufficient to enable it to make the Subsidy Payments and to consummate the transactions contemplated by this Agreement.

SECTION 6. AFFIRMATIVE COVENANTS

SMCCCD covenants and agrees that, until the earlier of (i) the payment in full of all of the Reimbursement Obligations (other than any unasserted claims for expense reimbursement or indemnification under subsections 10.2 or 10.3) and (ii) the consummation of any Auction Sale, Call Option Sale or Put Option Sale (as such terms are defined in the Option Agreement), SMCCCD shall perform all covenants in this Section 6.

6.1 Financial Statements and Other Reports.

SMCCCD will maintain a system of accounting established and administered in accordance with sound business practices to permit preparation of financial statements in conformity with GAS. With respect to the Station, SMCCCD will deliver to LPN:

(i) Triggering Events, etc.: promptly upon any officer of SMCCCD obtaining knowledge (a) of any condition or event that constitutes a Triggering Event or Potential Triggering Event, (b) that any Person has given any notice to SMCCCD or taken any other action with respect to a claimed default or event or condition of the type referred to in subsection 9.1A, or (c) of the occurrence of any event or change that has

caused or evidences, either in any case or in the aggregate, a Material Adverse Effect, an Officer's Certificate specifying the nature and period of existence of such condition, event or change, or specifying the notice given or action taken by any such Person and the nature of such claimed Triggering Event, Potential Triggering Event, default, event, condition or change, and what action SMCCCD has taken, is taking and proposes to take with respect thereto;

(ii) Year-End Financials: as soon as available and in any event when provided to the Corporation for Public Broadcasting (a) the Annual Financial Report for the Station as prepared and certified by independent certified public accountants and (b) a copy of its Local Content and Service Report prepared in accordance with the requirements of the Corporation for Public Broadcasting;

(iii) Annual Budget: as soon as available, the Station's annual budget (in reasonable detail) for the next Fiscal Year;

(iv) Officer's Certificate: at the commencement of each Fiscal Year an Officer's Certificate certifying to the availability of funds sufficient to meet any Reimbursement Obligations of SMCCCD during the next Fiscal Year.

(v) Litigation or Other Proceedings: promptly upon any Officer of SMCCCD obtaining knowledge of (1) the institution of, or non-frivolous threat of, any Proceeding against or affecting SMCCCD or any of its property not previously disclosed in writing by SMCCCD to LPN or (2) any material development in any Proceeding that, in any case: (x) if adversely determined, has a reasonable possibility after giving effect to the coverage and policy limits of insurance policies issued to SMCCCD, of giving rise to a Material Adverse Effect; (y) seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby; or (z) could affect in any way any FCC License, except for Proceedings of general applicability to television broadcast stations; written notice thereof together with such other information as may be reasonably available to SMCCCD to enable LPN and its counsel to evaluate such matters;

(vi) Employee-Related Events: promptly upon the occurrence of any strike or work stoppage or becoming aware of any threatened strike or work stoppage, a written notice specifying the nature thereof, what action SMCCCD has taken, is taking or proposes to take with respect thereto;

(vii) Licenses, Regulations, etc.: promptly (and in any event within 2 Business Days) upon receipt of notice of (a) any forfeiture, non-renewal, cancellation, termination, revocation, suspension, material impairment or material modification of any FCC License or other material Governmental Authorization used by SMCCCD in the operation of the Station, or any notice of material default with respect to any such FCC License or other such material Governmental Authorization, (b) any refusal by the FCC or any other Communications Regulatory Authority to renew or extend any FCC License or other material Governmental Authorization used in the operation of the Station, (c) any complaint filed by or with the FCC or other Government Authority in connection with the Station, (d) any show cause order issued by the FCC in connection with the Station, (e) any disruption, interruption or discontinuation (even if temporary) with respect to the Station, or (f) any other event that could reasonably be expected to have a material adverse effect on any FCC License (other than events of general applicability to

television broadcast stations), an Officers' Certificate specifying the nature of such event, the period of existence thereof, and what action SMCCCD is taking and proposes to take with respect thereto; and

(viii) Other Information: with reasonable promptness, such other information and data as from time to time may be reasonably requested by LPN concerning the expenditures of the Station or its business or operations.

6.2 Existence, etc. Except as permitted under subsections 7.3 and 8.3, SMCCCD will at all times preserve and keep in full force and effect all rights and franchises material to its business (including, without limitation, the FCC License).

6.3 Payment of Taxes and Claims; Tax Returns. With respect to the Station, SMCCCD will pay all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of their properties or assets prior to the time when any penalty or fine shall be incurred with respect thereto; provided that no such claim need be paid if it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as such reserve or other appropriate provision, if any, as shall be required in conformity with GAS shall have been made.

6.4 Maintenance of Properties; Insurance. SMCCCD will maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted, all material properties used in connection with the operation of the Station and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof. SMCCCD will maintain or cause to be maintained such self-insurance and commercial insurance coverage as it has maintained during the past Fiscal Year, consistent with State requirements.

6.5 Compliance with Laws, etc. With respect to the Station, SMCCCD shall comply in all material respects with the requirements of all applicable laws, rules, regulations and orders (including all Environmental Laws) of any Government Authority (including the FCC and any other Communications Regulatory Authority).

6.6 Environmental Matters. With respect to the Station, SMCCCD will deliver to LPN, promptly upon the occurrence thereof, written notice describing in reasonable detail (a) any material Environmental Claims that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, and (b) SMCCCD's discovery of any occurrence or condition on any real property adjoining or in the vicinity of any Facility that could cause such Facility or any part thereof to be subject to any material restrictions on the ownership, occupancy, transferability or use thereof under any Environmental Laws. SMCCCD shall promptly take any and all actions necessary to (i) cure any violation of applicable Environmental Laws by SMCCCD that could reasonably be expected to result in, individually or in the aggregate, any material penalty and (ii) make an appropriate response to any Environmental Claim against SMCCCD and discharge any obligations it may have to any Person thereunder.

6.7 Proceeds Account. SMCCCD shall maintain a deposit account subject to the Control Agreement in favor of LPN with respect to LPN's share of the Proceeds (the "**Proceeds Account**").

6.8 Conduct of Business. From and after the Effective Date, and except as expressly contemplated in the Funding Documents, SMCCCD shall continue to operate the Station in substantially the same manner as operated prior to the Effective Date.

6.9 Performance of Obligations. SMCCCD shall (i) perform all of its obligations under the terms of each Funding Document and (ii) take all actions necessary to cause the spectrum usage rights associated with the FCC License to be relinquished in the Auction (as such term is defined in the Option Agreement), subject to the terms set forth in the Bid Management Agreement.

6.10 Use of Proceeds. The proceeds of each Subsidy Payment shall be applied by SMCCCD to fund the operation of the Station

6.11 Access to Facilities. At LPN's request, SMCCCD shall from time to time give to, or cause to be given to, LPN full access during normal business hours to the Station (including its main studio and transmission equipment); *provided, however*, that all such access shall be scheduled in a manner reasonably acceptable to SMCCCD.

SECTION 7. NEGATIVE COVENANTS

SMCCCD covenants and agrees that, until the earlier of (i) the payment in full of all of the Reimbursement Obligations (other than any unasserted claims for expense reimbursement or indemnification under subsections 10.2 or 10.3) and (ii) the consummation of any Auction Sale, Call Option Sale or Put Option Sale (as such terms are defined in the Option Agreement), SMCCCD shall perform all covenants in this Section 7.

7.1 Indebtedness. Other than in the ordinary course of business, SMCCCD shall not, directly or indirectly, create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to, any Indebtedness (other than any Reimbursement Obligations) in respect of the Station.

7.2 Liens and Related Matters. SMCCCD shall not, directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to any property or asset of SMCCCD used in the operation of the Station, whether now owned or hereafter acquired, or any income therefrom, or file or permit the filing of, or permit to remain in effect, any financing statement or other similar notice of any Lien with respect to any such property, asset, income or profits under the UCC or under any similar recording or notice statute, except Permitted Encumbrances.

7.3 Restriction on Fundamental Changes; Asset Sales. SMCCCD shall not convey, sell, lease or sub-lease (as lessor or sublessor), transfer or otherwise dispose of, in one transaction or a series of transactions, substantially all of its business, property or assets (including its notes or receivables, whether newly issued or outstanding) used in connection with the operation of the Station, whether now owned or hereafter acquired, other than in connection with the transactions contemplated by the Option Agreement. SMCCCD shall not grant or agree to grant any Person (other than LPN) any interest in any proceeds from any conveyance, surrender or other disposition of any FCC License.

SECTION 8. NEGATIVE COVENANTS DURING A TRIGGERING EVENT OR AFTER THE FUNDING TERMINATION DATE.

SMCCCD covenants and agrees that, during the occurrence and continuation of a Triggering Event or at any time after the Funding Termination Date and until the earlier of (i) the payment in full of all of the Reimbursement Obligations (other than any unasserted claims for expense reimbursement or indemnification under subsections 10.2 or 10.3) and (ii) the consummation of any Auction Sale, Call Option Sale or Put Option Sale (as such terms are defined in the Option Agreement), SMCCCD shall perform all covenants in this Section 8.

8.1 **Indebtedness.** Other in the ordinary course of business, SMCCCD shall not, directly or indirectly, create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to, any other Indebtedness (other than any Reimbursement Obligations).

8.2 **Liens and Related Matters.** Except in the ordinary course of business, SMCCCD shall not, directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to any property or asset of any kind (including any document or instrument in respect of goods or accounts receivable) of SMCCCD, whether now owned or hereafter acquired, or any income or profits therefrom, or file or permit the filing of, or permit to remain in effect, any financing statement or other similar notice of any Lien with respect to any such property, asset, income or profits under the UCC or under any similar recording or notice statute, except Permitted Encumbrances.

8.3 **Restriction on Fundamental Changes; Asset Sales.** Other than in the ordinary course of business, SMCCCD shall not convey, sell, lease or sub-lease (as lessor or sublessor), transfer or otherwise dispose of, in one transaction or a series of transactions, all or any part of its business, property or assets (including its notes or receivables, whether newly issued or outstanding) used in connection with the Station, whether now owned or hereafter acquired.

SECTION 9. REIMBURSEMENT OBLIGATIONS

9.1 **Triggering Events.** To the extent that the occurrence of any of the following conditions or events ("Triggering Events") shall result in a Material Adverse Effect:

A. **Default in Other Agreements.** Breach or default by SMCCCD with respect to any material term of (a) one or more items of Indebtedness or (b) any loan agreement, mortgage, indenture or other agreement relating to such item(s) of Indebtedness, if the effect of such breach or default is to cause, or to permit the holder or holders of that Indebtedness (or a trustee on behalf of such holder or holders) to cause, that Indebtedness to become or be declared due and payable prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be (upon the giving or receiving of notice, lapse of time, both, or otherwise); or

B. **Breach of Certain Covenants.** Failure of SMCCCD to perform or comply with any term or condition contained in subsection 6.2, 6.8, 6.10 or Section 7 or 8 of this Agreement; or

C. **Breach of Warranty.** Any representation, warranty, certification or other statement made by SMCCCD in any Funding Document shall be false in any material respect on the date as of which made; or

D. **Other Defaults Under Funding Documents.** SMCCCD shall default in the performance of or compliance with any term contained in (a) this Agreement or any of the Collateral Documents, other than any such term referred to in any other provision of this subsection 9.1, and such default shall not have been remedied or waived within 10 Business Days after the earlier of (i) an Officer of SMCCCD becoming aware of such default or (ii) receipt by SMCCCD of notice from LPN of such default or (b) the Option Agreement or the Bid Management Agreement; or

E. **Involuntary Appointment of Receiver, etc.** A decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over SMCCCD, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of SMCCCD for all or a substantial part of its property; or

a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of SMCCCD, and any such event described in this subsection 9.1E shall continue for 60 days unless dismissed, bonded or discharged; or

F. Voluntary Bankruptcy; Appointment of Receiver, etc.

(i) SMCCCD shall have an order for relief entered with respect to it or commence a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or SMCCCD shall make any assignment for the benefit of creditors; or

(ii) SMCCCD shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or the Governing Body (or any committee thereof) of SMCCCD shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to in clause (i) above or this clause (ii); or

G. Judgments and Attachments. Any money judgment, writ or warrant of attachment or similar process related to the Station shall be entered or filed against SMCCCD or any of the Station's assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of 30 days (or in any event later than five days prior to the date of any proposed sale thereunder); or

H. Invalidity of Funding Documents; Failure of Security; Repudiation of Reimbursement Obligations. At any time after the execution and delivery thereof, (i) any Funding Document or any provision thereof, for any reason other than the satisfaction in full of all Reimbursement Obligations, shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void, (ii) LPN shall not have or shall cease to have a valid and perfected First Priority Lien in the Proceeds purported to be covered by the Collateral Documents, in each case for any reason other than the failure of LPN to take any action within its control, or (iii) SMCCCD shall contest the validity or enforceability of any Funding Document or any provision thereof in writing or deny in writing that it has any further liability under any Funding Document to which it is a party or any provision thereof; or

I. FCC License.

(i) The FCC License shall have been cancelled, terminated, suspended, revoked, denied renewal, materially adversely modified, or otherwise ceased to be in full force and effect; or

(ii) The FCC, any Communications Regulatory Authority or any other Government Authority commences an action or proceeding that could lead to the cancellation, termination, suspension, revocation, non-renewal, or material adverse modification of any FCC License; or

J. Reimbursement Event. A Reimbursement Event (as such term is defined in the Option Agreement) shall have occurred:

THEN (i) upon the occurrence of any Triggering Event described in subsection 9.1E or 9.1F, each of the Subsidy Payments made on or prior to such date, shall automatically become immediately due and payable, without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by SMCCCD, and the obligation of LPN to make any Subsidy Payment shall thereupon terminate; and (ii) upon the occurrence and during the continuation of any other Triggering Event, LPN may, by written notice to SMCCCD, either, in LPN's sole discretion (x) declare all or any portion of the Subsidy Payments made on or prior to such date, to be, and the same shall forthwith become, immediately due and payable, and the obligation of LPN to make any Subsidy Payment hereunder shall thereupon terminate, or (y) exercise the Sale Call Option upon the terms and conditions set forth in the Option Agreement, in which case LPN shall be deemed to have waived its right to repayment of the Reimbursement Obligations with respect to such Triggering Event and the obligation of LPN to make Subsidy Payments shall continue; provided, however, if the occurrence of a Triggering Event is the result of SMCCCD's willful breach of any obligations under this Agreement or the other Funding Documents (a "**Willful Breach**"), then, without limiting any other rights or remedies of LPN, SMCCCD's repayment of Subsidy Payments pursuant to clause (i) or (ii) shall be made together with interest thereon at a rate equal to 8% per annum. For the avoidance of doubt, failure by SMCCCD to discharge its obligations pursuant to the Sale Call Option granted under the Option Agreement will constitute a Willful Breach hereunder.

9.2 Application of Proceeds and Payments during a Triggering Event; Payments Generally; Calculation of Interest.

A. Application of Proceeds and Payments during a Triggering Event. Upon the occurrence and during the continuation of a Triggering Event, all payments made by SMCCCD to LPN in respect of any Reimbursement Obligation shall be applied to the payment of interest (if interest is payable) before application to principal and shall be applied to reduce such principal pro rata. In the event of a Willful Breach, LPN shall also be entitled to compensation, reimbursement and indemnification under any Funding Document, and to the payment of all costs and expenses paid or incurred by LPN in connection with the Funding Documents.

B. Payments Generally. All payments by SMCCCD of Reimbursement Obligations shall be made in Dollars in same day funds, free of any restriction or condition, and delivered to LPN not later than noon San Francisco time on the date due in the LPN Account; funds received by LPN after that time on such due date shall be deemed to have been paid by SMCCCD on the next succeeding Business Day. Whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of the payment of interest hereunder.

C. Calculation of Interest. Interest payable under subsection 9.1 of this Agreement, if any, shall be computed on the basis of a 365-day year, in each case for the actual number of days elapsed in the period during which it accrues. In computing interest on any Subsidy Payment, the date of the making of such Subsidy Payment shall be included, and the date of payment of such Subsidy Payment shall be excluded; provided that if a Subsidy Payment is repaid on the same day on which it is made, one day's interest shall be paid on that Subsidy Payment. In no event shall the rate of interest payable by SMCCCD with respect to any Subsidy Payment exceed the maximum rate of interest permitted to be charged under applicable law (the "**Maximum Rate**"). If LPN shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the unpaid principal of the Subsidy Payment or, if it exceeds such unpaid principal, refunded to SMCCCD.

SECTION 10. MISCELLANEOUS

10.1 Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and the successors and assigns of LPN. SMCCCD's rights or obligations hereunder or any interest therein may not be assigned or delegated by SMCCCD without the prior written consent of LPN (and any attempted assignment or transfer by SMCCCD without such consent shall be null and void). LPN may assign its rights hereunder and delegate its duties hereunder, in whole or in part, to one or more Affiliates without the consent of SMCCCD. Any such assignment or delegation authorized pursuant to this subsection 10.1 shall be pursuant to a written agreement, which shall be delivered to SMCCCD. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, the Affiliates of each of LPN and Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

10.2 Expenses. If either party to this Agreement shall bring any action for relief against the other, declaratory or otherwise, arising out of this Agreement, the losing party shall pay to the prevailing party reasonable attorneys' fees and costs incurred in bringing such suit and/or enforcing any judgment granted therein. Any judgment or order entered in such action shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing such judgment.

10.3 Indemnity.

A. Indemnification by SMCCCD. SMCCCD shall defend and save LPN and its respective officers, directors, employees, agents, representatives and permitted assigns (each, an "**LPN Indemnified Party**"), forever harmless from and against, and shall reimburse each LPN Indemnified Party for, any and all liabilities, obligations, deficiencies, demands, claims, suits, actions, or causes of action, assessments, losses, costs and expenses (including reasonable attorneys' fees) ("**Losses**"), sustained or incurred by an LPN Indemnified Party, relating to, resulting from, arising out of, or otherwise by virtue of, any of the following:

- (i) any breach of a representation or warranty made by SMCCCD this Agreement; and
- (ii) any breach of a covenant or other agreement made by SMCCCD in this Agreement.

B. Indemnification by LPN. LPN shall defend and save SMCCCD, its subsidiaries, and their respective officers, directors, employees, agents, representatives and permitted assigns (each, an "**SMCCCD Indemnified Party**" and together with the LPN Indemnified Parties, ("**Indemnitees**"), forever harmless from and against, and shall reimburse each SMCCCD Indemnified Party for, any and all Losses sustained or incurred by an SMCCCD Indemnified Party, relating to, resulting from, arising out of, or otherwise by virtue of, any of the following:

- (i) any breach of a representation or warranty made by LPN in this Agreement; and
- (ii) any breach of a covenant or other agreement made by LPN in this Agreement.

10.4 Amendments and Waivers; Termination. This Agreement shall not be amended, modified or waived in whole or in part except in writing signed by an officer of the party to be bound by such amendment, modification or waiver. This Agreement may be terminated (a) by mutual written agreement of SMCCCD and LPN, (b) by LPN upon the occurrence of any Triggering Event described in subsection 9.1, or (c) by SMCCCD without penalty to it in the event that LPN fails to make any Subsidy Payment within 34 days of its due date.

10.5 Independence of Covenants. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Triggering Event or Potential Triggering Event if such action is taken or condition exists.

10.6 Notices; Effectiveness of Signatures. Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given shall be in writing and may be personally served, or sent by United States mail, return receipt requested, or courier service that provides proof of delivery, and shall be deemed to have been given when delivered. For the purposes hereof, the address of each party hereto shall be as set forth under such party's name on the signature pages hereof or such other address as shall be designated by such Person in a written notice delivered to the other parties hereto. Funding Documents and notices under the Funding Documents may be transmitted and/or signed by signatures delivered in 'PDF' format by electronic mail with affirmative return acknowledgement of receipt by the recipient. The effectiveness of any such documents and signatures shall, subject to applicable law, have the same force and effect as an original copy with manual signatures and shall be binding on SMCCCD and LPN. Either party may also require that any such documents and signature be confirmed by a manually-signed copy thereof; provided, however, that the failure to request or deliver any such manually-signed copy shall not affect the effectiveness of any document or signature.

10.7 Survival of Representations, Warranties and Agreements. All representations, warranties and agreements made herein shall survive the execution and delivery of this Agreement and the making of the Subsidy Payments hereunder. Notwithstanding anything in this Agreement or implied by law to the contrary, the agreements of SMCCCD set forth in subsections 10.3 and 10.12 shall survive the payment of the Subsidy Payments and the termination of this Agreement.

10.8 Failure or Indulgence Not Waiver; Remedies Cumulative. No failure or delay on the part of LPN or SMCCCD in the exercise of any power, right or privilege hereunder or under any other Funding Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. All rights and remedies existing under this Agreement and the other Funding Documents are cumulative to, and not exclusive of, any rights or remedies otherwise available.

10.9 Payments Set Aside. To the extent that SMCCCD makes a payment or payments to LPN or LPN exercises its rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, any other state or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

10.10 Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby, although the parties shall strive to interpret the remaining provisions and obligations so as to give effect to their mutual economic goals.

10.11 Damage Waiver. To the extent permitted by law, neither SMCCCD nor LPN shall assert, and hereby waive, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with or as a result of this Agreement, any other Funding Document, any transaction contemplated by the Funding Documents, any Subsidy Payment or the use of proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with the Funding Documents or the transactions contemplated thereby.

10.12 Applicable Law. THIS AGREEMENT AND THE OTHER FUNDING DOCUMENTS (EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN ANY SUCH FUNDING DOCUMENT), AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF CALIFORNIA (INCLUDING SECTION 1646.5 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA), WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THAT WOULD REQUIRE APPLICATION OF ANOTHER LAW.

10.13 Construction of Agreement; Nature of Relationship. Each of the parties hereto acknowledges that (i) it has been represented by counsel in the negotiation and documentation of the terms of this Agreement, (ii) it has had full and fair opportunity to review and revise the terms of this Agreement, and (iii) this Agreement has been drafted jointly by both of the parties hereto. Accordingly, each of the parties hereto acknowledges and agrees that the terms of this Agreement shall not be construed against or in favor of the other party. The parties agree that in connection with all aspects of the transactions contemplated hereby or by the other Funding Documents and any communications in connection therewith, SMCCCD, on the one hand, and LPN, on the other hand, will have a business relationship that does not create, by implication or otherwise, any fiduciary duty on the part of either party or any of their respective Affiliates, and no such duty will be deemed to have arisen in connection with any such transactions or communications.

10.14 Consent to Jurisdiction and Service of Process. ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST SMCCCD OR LPN ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER FUNDING DOCUMENT, OR ANY OBLIGATIONS HEREUNDER AND THEREUNDER, MAY BE BROUGHT IN A STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE OF CALIFORNIA, COUNTY AND CITY OF SAN MATEO. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH OF SMCCCD AND LPN, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY (I) ACCEPTS GENERALLY AND UNCONDITIONALLY THE EXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS; (II) WAIVES ANY DEFENSE OF *FORUM NON CONVENIENS*; (III) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO SMCCCD OR LPN, AS APPLICABLE, AT SUCH PARTY'S ADDRESS PROVIDED IN ACCORDANCE WITH SUBSECTION 10.6; (IV) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (III) ABOVE IS SUFFICIENT TO CONFER

PERSONAL JURISDICTION OVER ITSELF IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; (IV) AGREES THAT THE OTHER PARTY RETAINS THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW; AND (V) AGREES THAT THE PROVISIONS OF THIS SUBSECTION 10.14 RELATING TO JURISDICTION AND VENUE SHALL BE BINDING AND ENFORCEABLE TO THE FULLEST EXTENT PERMISSIBLE UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 410.40 OR OTHERWISE.

10.15 Confidentiality; Public Disclosure. A Party receiving Confidential Information ("Receiving Party") from the other party ("Disclosing Party") will refrain from directly or indirectly disclosing the Disclosing Party's Confidential Information and may not use the Disclosing Party's Confidential Information for any purpose whatsoever, except for the purpose for which it was provided and as contemplated and authorized by this Agreement or the other Funding Documents. The term "Confidential Information" shall mean for purposes of this Agreement and the other Funding Documents all non-public information and material, whether disclosed or made available in writing, electronically, orally, visually or otherwise, regarding the business of the Disclosing Party and third parties who have furnished confidential, non-public information to the Disclosing Party and all other information or material disclosed to the Receiving Party by the Disclosing Party or its Affiliates or representatives that should be understood by a reasonable business person to be confidential. Notwithstanding the foregoing, the Receiving Party may use and disclose to its Affiliates, directors, officers, employees and agents, including accountants, legal counsel, investment bankers, underwriters and other advisors (collectively "Representatives") the Confidential Information of the Disclosing Party as reasonably necessary to enable the Receiving Party to fulfill its obligations and realize its benefits under this Agreement and the other Funding Documents, *provided, however*, (a) that the Receiving Party shall make all commercially reasonable efforts to ensure that each such Representative acknowledges and complies with this Section 25 as if such Representative were a party to this Section, and (b) that the Receiving Party shall remain responsible and liable for such Representative's compliance with this Section. The Receiving Party shall use the same degree of care to protect the Confidential Information of the Disclosing Party from unauthorized use or disclosure as it uses to protect its own information of a similar nature, but in no event less than reasonable care. Notwithstanding the foregoing, the Parties acknowledge that SMCCCD is subject to the open records requirements of California law. SMCCCD shall not disclose any Confidential Information that may lawfully be withheld under that law. To the maximum extent permitted by law, SMCCCD will provide LPN with notice of any intended public disclosure of this Agreement or any other Funding Document and provide LPN with the opportunity to consult with SMCCCD and redact such agreements to the extent permitted by law prior to their public disclosure.

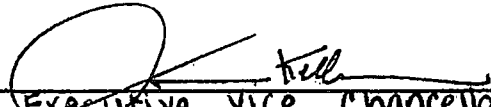
10.16 Counterparts; Effectiveness. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in counterparts, each of which when so executed and delivered shall be deemed an original, but both such counterparts together shall constitute but one and the same instrument; signature pages may be detached from separate counterparts and attached to a single counterpart so that both signature pages are physically attached to the same document. This Agreement shall become effective upon (i) the execution of a counterpart hereof by each of the parties hereto and (ii) the satisfaction or waiver of the other conditions set forth in subsection 3.1.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

SMCCCD:

**SAN MATEO COUNTY COMMUNITY COLLEGE
DISTRICT**

By: 
Title: Executive Vice Chancellor

Notice Address:

Executive Vice Chancellor
San Mateo County Community College District
3401 CSM Drive
San Mateo, CA 94402
Phone: 650-358-6790
Email: roecksj@smccd.edu

With a copy to:

Lawrence M. Miller
Schwartz, Woods & Miller
1233 20th Street, NW, Suite 610
Washington, D.C. 20036-7322
Phone: (202) 833-1700
Email: miller@swmlaw.com

With a copy to:

Jan Roecks
San Mateo County Community College District
3401 CSM Drive
San Mateo, CA 94402
Phone: 650-358-6790
Email: roecksj@smccd.edu

Eugene Whitlock
400 County Center, 6th Floor
Redwood City, CA 94063

LPN:

LOCUSPOINT NETWORKS, LLC

By: William deKay
Title: CEO

Notice Address:

LocusPoint Networks, LLC
Pleasanton Corporate Commons
6200 Stoneridge Mall Road, Suite 300
Pleasanton, CA 94588
Attn: William deKay
Facsimile No.: (925) 399-6001
Email: bill@locuspointnetworks.com

With a copy to:

O'Melveny & Myers LLP
2765 Sand Hill Road
Menlo Park, California 94025
Attn: David Makarechian, Esq.
Facsimile No.: (650) 473-2601
Email: dmakarechian@omm.com

EXHIBITS

I
II

FORM OF COMPLIANCE CERTIFICATE
FORM OF SECURITY AGREEMENT

EXHIBIT I

[FORM OF] COMPLIANCE CERTIFICATE

COMPLIANCE CERTIFICATE

THE UNDERSIGNED HEREBY CERTIFIES THAT:

(1) I am the [Title] of San Mateo County Community College District, a California community college district ("SMCCCD");

(2) I have reviewed the terms of that certain Funding Agreement dated as of May 16, 2013, as amended, supplemented or otherwise modified to the date hereof (said Funding Agreement, as so amended, supplemented or otherwise modified, being the "Funding Agreement", the terms defined therein and not otherwise defined in this Certificate being used in this Certificate as therein defined), by and among SMCCCD and LocusPoint Networks, LLC, a Delaware limited liability company ("LPN"), and the terms of the other Funding Documents; and I have made, or have caused to be made under our supervision, a review in reasonable detail of the transactions and condition of SMCCCD during the accounting period covered by the attached financial statements;

(3) As of the date hereof:

(i) The representations and warranties contained in the Funding Agreement and in the other Funding Documents are true, correct and complete in all material respects to the same extent as though made on and as of the date hereof, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties were true, correct and complete in all material respects on and as of such earlier date; provided, that, if a representation and warranty is qualified as to materiality, the materiality qualifier set forth above shall be disregarded with respect to such representation and warranty for purposes of this condition;

(ii) No event has occurred or would result from the making of such Subsidy Payment that would constitute a Triggering Event or a Potential Triggering Event;

(iii) SMCCCD has performed in all material respects all agreements and satisfied all conditions which the Funding Agreement and each other Funding Document provides shall be performed or satisfied by it on or before the date hereof;

(iv) To the knowledge of SMCCCD, no order, judgment or decree of any arbitrator or Government Authority purports to enjoin or restrain LPN from making the Subsidy Payment to be made by it on the date hereof;

(v) No FCC License has been forfeited or materially impaired for any reason, including as a result of or in connection with any Funding Document or the transactions contemplated hereby or thereby; and

(vi) No Material Adverse Effect has occurred.

The foregoing certifications are made and delivered this ____ day of _____, ____ pursuant to subsection 3.2A of the Funding Agreement.

**SAN MATEO COUNTY COMMUNITY COLLEGE
DISTRICT**

By: _____
Title: _____

EXHIBIT II

FORM OF SECURITY AGREEMENT

This SECURITY AGREEMENT (this "Agreement") is dated as of May 16, 2013 and entered into by and between SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT, a California community college district ("SMCCCD"), and LOCUSPOINT NETWORKS, LLC, a Delaware limited liability SMCCCD ("LPN").

PRELIMINARY STATEMENTS

A. Pursuant to the Funding Agreement dated as of May 16, 2013 (said Funding Agreement, as it may hereafter be amended, restated, supplemented or otherwise modified from time to time, being the "Funding Agreement"; the terms defined therein and not otherwise defined in Section 20 or elsewhere herein being used herein as therein defined), by and between SMCCCD and LPN, LPN has made certain commitments, subject to the terms and conditions set forth in the Funding Agreement, to make funds available to SMCCCD.

B. In consideration of the funds provided under the Funding Agreement, SMCCCD has entered into the Option Agreement and the Bid Management Agreement with LPN, and it is desired that the obligations of SMCCCD under the Option Agreement be secured hereunder.

C. It is a condition precedent to the funding by LPN of the LPN Payment under the Funding Agreement that SMCCCD shall have granted the security interests and undertaken the obligations contemplated by this Agreement.

NOW, THEREFORE, in consideration of the agreements set forth herein and in the Funding Agreement and in order to induce LPN to fund the LPN Payment under the Funding Agreement and to enter into the other Funding Documents, SMCCCD hereby agrees with LPN as follows:

SECTION 1. Grant of Security. SMCCCD hereby assigns to LPN, and hereby grants to LPN a security interest in, all of SMCCCD's right, title and interest in and to (a) the LPN Share, (b) the Proceeds Account (which is more specifically described on Schedule 1 annexed hereto) and all Money representing the LPN Share from time to time on deposit in the Proceeds Account, and (c) all "proceeds" (as defined in the UCC) with respect to any of the items described in the foregoing clauses (a) and (b), in each case whether now or hereafter existing (collectively, the "Collateral").

SECTION 2. Security for Obligations. This Agreement secures, and the Collateral is collateral security for, the prompt payment or performance in full when due of all Secured Obligations of SMCCCD. "Secured Obligations" means the obligations of SMCCCD to pay the LPN Share to LPN in accordance with the terms of the Option Agreement, the Funding Agreement and the other Funding Documents.

SECTION 3. Representations and Warranties. SMCCCD represents and warrants as follows: (a) except as expressly permitted by the Funding Agreement, SMCCCD will at all times own its interests in the Collateral free and clear of any Lien and no effective financing statement or other instrument similar in effect covering all or any part of the Collateral is on file in any filing or recording office; (b) the security interests in the Collateral granted to LPN hereunder constitute valid security interests in the Collateral, securing the payment of the Secured Obligations; and (c) upon (i) the filing of UCC financing statements naming SMCCCD as "debtor", naming LPN as "secured party" and describing the Collateral in the filing offices with respect to SMCCCD set forth on Schedule 2 annexed hereto, and (ii) the

execution and delivery to LPN of an agreement providing for control by LPN of the Proceeds Account, the security interests in the Collateral granted to LPN will constitute perfected security interests therein prior to all other Liens, and all filings and other actions necessary or desirable to perfect and protect such security interests have been, or promptly after the Effective Date will be, duly made or taken.

SECTION 4. Further Assurances. SMCCCD agrees that from time to time, at the expense of SMCCCD, SMCCCD will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that LPN may request, in order to perfect and protect any security interest granted or purported to be granted hereby or to enable LPN to exercise and enforce its rights and remedies hereunder with respect to any Collateral.

SECTION 5. Certain Covenants of SMCCCD. SMCCCD shall: (a) not use or permit any Collateral to be used unlawfully or in violation of any provision of this Agreement or any applicable statute, regulation or ordinance or any policy of insurance covering the Collateral; and (b) use the Collateral only in accordance with the terms and conditions of the Option Agreement and the other Funding Documents.

SECTION 6. LPN Appointed Attorney-in-Fact. SMCCCD hereby irrevocably appoints LPN as SMCCCD's attorney-in-fact, with full authority in the place and stead of SMCCCD and in the name of SMCCCD, LPN or otherwise, from time to time upon any breach of or default under the Option Agreement or any other Funding Document, in LPN's discretion to take any action and to execute any instrument that LPN may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation to: (a) ask for, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral; and (b) file any claims or take any action or institute any proceedings that LPN may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce or protect the rights of LPN with respect to any of the Collateral.

SECTION 7. LPN May Perform. If SMCCCD fails to perform any agreement contained herein, LPN may itself perform, or cause performance of, such agreement, and the expenses of LPN incurred in connection therewith shall be payable by SMCCCD under Section 10.

SECTION 8. Remedies. Upon any breach of or default under the Option Agreement or any other Funding Document by SMCCCD, LPN may exercise in respect of the Collateral, in addition to all other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party on default under the UCC (whether or not the UCC applies to the affected Collateral). LPN may also, upon any breach of or default under the Option Agreement or any other Funding Document by SMCCCD, provide instructions directing the disposition of funds representing the LPN Share in the Proceeds Account. SMCCCD further agrees that a breach of any of the covenants contained in this Section 8 will cause irreparable injury to LPN, that LPN has no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section shall be specifically enforceable against SMCCCD, and SMCCCD hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no default has occurred giving rise to the Secured Obligations becoming due and payable prior to their stated maturities.

SECTION 9. Application of Proceeds. Except as expressly provided elsewhere in this Agreement, all proceeds received by LPN in respect of any sale of, collection from, or other realization upon all or any part of the Collateral shall be applied in accordance with the terms of the Funding Agreement.

SECTION 10. Indemnity and Expenses. SMCCCD agrees to indemnify LPN from and against any and all claims, losses and liabilities in any way relating to, growing out of or resulting from this Agreement and the transactions contemplated hereby (including, without limitation, enforcement of this

Agreement), except to the extent such claims, losses or liabilities result solely from LPN's gross negligence or willful misconduct as finally determined by a court of competent jurisdiction. LPN agrees to indemnify SMCCCD from and against any and all claims, losses and liabilities in any way relating to, growing out of or resulting from this Agreement and the transactions contemplated hereby (including, without limitation, enforcement of this Agreement), except to the extent such claims, losses or liabilities result solely from SMCCCD's gross negligence or willful misconduct as finally determined by a court of competent jurisdiction. If either party to this Agreement shall bring any action for relief against the other, declaratory or otherwise, arising out of this Agreement, the losing party shall pay to the prevailing party reasonable attorneys' fees and costs incurred in bringing such suit and/or enforcing any judgment granted therein. Any judgment or order entered in such action shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing such judgment. The obligations of each party in this Section 10 shall survive the termination of this Agreement and the discharge of the obligations under this Agreement and the other Funding Documents.

SECTION 11. Continuing Security Interest; Successors and Assigns; Termination and Release.

This Agreement shall create a continuing security interest in the Collateral and shall (i) remain in full force and effect until the payment in full of the Secured Obligations (other than unasserted claims for indemnification or expense reimbursement), (ii) be binding upon SMCCCD and its respective successors and assigns, and (iii) inure, together with the rights and remedies of LPN hereunder, to the benefit of LPN and its successors, transferees and assigns. Without limiting the generality of the foregoing clause (iii), LPN may assign or otherwise transfer its rights and obligations under any Funding Document in accordance with the terms of such Funding Agreement, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to LPN herein or otherwise. Upon the payment in full of all Secured Obligations (other than unasserted claims for indemnification or expense reimbursement), the security interest granted hereby shall terminate and all rights to the Collateral shall revert to the applicable SMCCCD. Upon any such termination LPN will, at SMCCCD's expense, execute and deliver to SMCCCD such documents as SMCCCD shall reasonably request to evidence such termination.

SECTION 12. Amendments; Etc. No amendment, modification, termination or waiver of any provision of this Agreement, and no consent to any departure by SMCCCD therefrom, shall in any event be effective unless the same shall be in writing and signed by LPN and, in the case of any such amendment or modification, by SMCCCD. Any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

SECTION 13. Notices. Any notice or other communication herein required or permitted to be given shall be in writing and may be personally served or sent by electronic mail, telefacsimile or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service, upon receipt of electronic mail, telefacsimile, or three Business Days after depositing it in the United States mail with postage prepaid and properly addressed; provided that notices to LPN shall not be effective until received. For the purposes hereof, the address of each party hereto shall be as provided in subsection 10.6 of the Funding Agreement or as set forth under such party's name on the signature pages hereof or such other address as shall be designated by such party in a written notice delivered to the other parties hereto.

SECTION 14. Failure or Indulgence Not Waiver; Remedies Cumulative. No failure or delay on the part of LPN in the exercise of any power, right or privilege hereunder shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude any other or further exercise thereof or of any other power, right or privilege. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

SECTION 15. Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

SECTION 16. Headings. Section and subsection headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

SECTION 17. Governing Law; Rules of Construction. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF CALIFORNIA (INCLUDING SECTION 1646.5 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA), WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THAT WOULD REQUIRE APPLICATION OF ANOTHER LAW, EXCEPT TO THE EXTENT THAT THE UCC PROVIDES THAT THE PERFECTION OF THE SECURITY INTEREST HEREUNDER, OR REMEDIES HEREUNDER, IN RESPECT OF ANY PARTICULAR COLLATERAL ARE GOVERNED BY THE LAWS OF A JURISDICTION OTHER THAN THE STATE OF CALIFORNIA, IN WHICH CASE THE LAWS OF SUCH JURISDICTION SHALL GOVERN WITH RESPECT TO THE PERFECTION OF THE SECURITY INTEREST IN, OR THE REMEDIES WITH RESPECT TO, SUCH PARTICULAR COLLATERAL. The rules of construction set forth in subsection 1.3 of the Funding Agreement shall be applicable to this Agreement *mutatis mutandis*.

SECTION 18. Consent to Jurisdiction and Service of Process. ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST SMCCCD OR LPN ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER FUNDING DOCUMENT, OR ANY OBLIGATIONS HEREUNDER AND THEREUNDER, MAY BE BROUGHT IN A STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE OF CALIFORNIA, COUNTY AND CITY OF SAN MATEO. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH OF SMCCCD AND LPN, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY(I) ACCEPTS GENERALLY AND UNCONDITIONALLY THE EXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS; (II) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (III) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO SMCCCD OR LPN, AS APPLICABLE, AT SUCH PARTY'S ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 13; (IV) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (III) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER ITSELF IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; (V) AGREES THAT THE OTHER PARTY RETAINS THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW; AND (VI) AGREES THAT THE PROVISIONS OF THIS SECTION 18 RELATING TO JURISDICTION AND VENUE SHALL BE BINDING AND ENFORCEABLE TO THE FULLEST EXTENT PERMISSIBLE UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 410.40 OR OTHERWISE.

SECTION 19. Counterparts. This Agreement may be executed in one or more counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document.

SECTION 20. Definitions. Each capitalized term utilized in this Agreement that is not defined in the Funding Agreement or in this Agreement, but that is defined in the UCC, including the categories of Collateral listed in Section 1 hereof, shall have the meaning set forth in Articles 1, 8 or 9 of the UCC. In addition, the following terms used in this Agreement shall have the following meanings:

“Collateral” has the meaning set forth in Section 1.

“Funding Agreement” has the meaning set forth in the Preliminary Statements of this Agreement.

“LPN Share” has the meaning assigned to it in the Option Agreement.

“Secured Obligations” has the meaning set forth in Section 2 hereof.

“UCC” means the Uniform Commercial Code, as it exists on the date of this Agreement or as it may hereafter be amended, in the State of California.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, SMCCCD and LPN have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

**SAN MATEO COMMUNITY COLLEGE
DISTRICT**

By: _____
Name: _____
Title: _____

Notice Address:

Executive Vice Chancellor
San Mateo County Community College District
3401 CSM Drive
San Mateo, CA 94402
Phone: 650-358-6790
Email: roecksi@smccd.edu

With a copy to:

Lawrence M. Miller
Schwartz, Woods & Miller
1233 20th Street, NW, Suite 610
Washington, D.C. 20036-7322
Phone: 202-833-1700
Email: miller@swmlaw.com

With a copy to:

Jan Roecks
San Mateo County Community College District
3401 CSM Drive
San Mateo, CA 94402
Phone: 650-358-6790
Email: roecksi@smccd.edu

LOCUSPOINT NETWORKS, LLC

By: _____
Name: _____
Title: _____

Notice Address:

LocusPoint Networks, LLC
Pleasanton Corporate Commons
6200 Stoneridge Mall Road, Suite 300
Pleasanton, CA 94588
Attn: William deKay
Facsimile No.:
Email: bill@locuspointnetworks.com

With a copy to:

O'Melveny & Myers LLP
2765 Sand Hill Road
Menlo Park, CA 94025
Attn: David Makarechian, Esq.
Facsimile No.: 650-473-2601
Email: dmakarechian@omm.com

**SCHEDULE 1
TO
SECURITY AGREEMENT**

Proceeds Account

<u>Type of Account</u>	<u>Depository Bank</u>	<u>Address of Depository Bank</u>	<u>Account Number</u>
Deposit Account	Union Bank of California	350 California Street, 10 th Floor San Francisco, CA 94104	A/C# 7020024903 ABA# 122000496

**SCHEDULE 2
TO
SECURITY AGREEMENT**

Filing Offices

California Secretary of State

SCHEDULES

4.1D FCC LICENSE AND MATERIAL GOVERNMENTAL AUTHORIZATIONS

(Attached)

4.5 LEASED REAL PROPERTY

Lease at Sutro.

4.8 MATERIAL CONTRACTS

American Public Television (Program provider)

NETA (Program provider)

EPS (Program provider)

Myers Information Systems (software services for programming)

AT&T (Studio to transmitter link)

Eaton Corp (UPS service contract)

United Comfort Solutions (Air conditioning service - Sutro)

United States of America

FEDERAL COMMUNICATIONS COMMISSION
TELEVISION BROADCAST STATION LICENSE



Authorizing Official:

Official Mailing Address:

SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT
1700 W HILLSDALE BLVD
SAN MATEO CA 94402

Kevin R. Harding
Associate Chief
Video Division
Media Bureau

Facility Id: 58912
Analog TSID: 410
Digital TSID: 411
Call Sign: KCSM-TV
License File Number: BLEDT-20091124AHY

Grant Date: April 04, 2011
This license expires 3:00 a.m.
local time, December 01, 2014.

This license covers permit no.: BPEDT-20080825AAV

Subject to the provisions of the Communications Act of 1934, subsequent acts and treaties, and all regulations heretofore or hereafter made by this Commission, and further subject to the conditions set forth in this license, the licensee is hereby authorized to use and operate the radio transmitting apparatus herein described.

This license is issued on the licensee's representation that the statements contained in licensee's application are true and that the undertakings therein contained so far as they are consistent herewith, will be carried out in good faith. The licensee shall, during the term of this license, render such broadcasting service as will serve the public interest, convenience, or necessity to the full extent of the privileges herein conferred.

This license shall not vest in the licensee any right to operate the station nor any right in the use of the frequency designated in the license beyond the term hereof, nor in any other manner than authorized herein. Neither the license nor the right granted hereunder shall be assigned or otherwise transferred in violation of the Communications Act of 1934. This license is subject to the right of use or control by the Government of the United States conferred by Section 606 of the Communications Act of 1934.

Callsign: KCSM-TV

License No.: BLEDT-20091124AHY

Name of Licensee: SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT

Station Location: CA-SAN MATEO

Frequency (MHz): 644 - 650

Channel: 43

Hours of Operation: Unlimited

Transmitter: Type Accepted. See Sections 73.1660, 73.1665 and 73.1670 of the Commission's Rules.

Antenna type: (directional or non-directional): Directional

Description: DIE, TUM-C5SP-14/60H-2-T-R

Beam Tilt: 0.75 Degrees Electrical

Major lobe directions 54 126
(degrees true):

Antenna Coordinates: North Latitude: 37 deg 45 min 19 sec

West Longitude: 122 deg 27 min 06 sec

Transmitter output power: 17.5 kW
12.44 DBK

Maximum effective radiated power (Average): 500 kW
26.99 DBK

Height of radiation center above ground: 288.3 Meters

Height of radiation center above mean sea level: 542.5 Meters

Height of radiation center above average terrain: 511.4 Meters

Antenna structure registration number: 1001289

Overall height of antenna structure above ground (including obstruction lighting if any) see the registration for this antenna structure.

*** END OF AUTHORIZATION ***

AMENDMENT TO FUNDING AGREEMENT

This Amendment ("Amendment") is entered into on December 17, 2015 ("Amendment Effective Date") by San Mateo County Community College District ("SMCCCD"), a community college district of the State of California, and LocusPoint Networks, LLC ("LPN"), a Delaware limited liability company, to amend the Funding Agreement between the District and LPN, dated as of May 16, 2013 ("Agreement"). Capitalized terms that are used but not defined herein shall have the meaning given to such terms in the Agreement.

WHEREAS, pursuant to the Agreement, LPN has agreed to partially fund the continued operation of station KCSM-TV (RF Channel 43), San Mateo, California (FCC Facility ID No. 58912) (the "Station") in consideration of the grant by SMCCCD of rights set forth in the Option Agreement and of the grant by SMCCCD of the rights set forth in the Agreement and the other Funding Documents; and

WHEREAS, under the Agreement, upon a Triggering Event under the Agreement, LPN would have the right, among other rights, to exercise a Sale Call Option granted under the Option Agreement; and

WHEREAS, following the execution of the Agreement, the FCC issued a new regulation, 47 C.F.R. § 1.2205, and related guidance (collectively, "Rule") prohibiting certain communications from the deadline for submitting applications to participate in the reverse auction portion of the Auction until the results of the Auction are announced by public notice ("Quiet Period"), and as a result, LPN and SMCCCD may not communicate during the Quiet Period with respect to certain circumstances that could give rise to an exercise of the Sale Call Option; and

WHEREAS, to avoid any doubt as to the parties compliance with the Rule, and pursuant to Section 14 (Modification) of the Agreement, the Parties desire to amend the Agreement to modify the earliest date by which LPN could exercise the Sale Call Option in the event of a Triggering Event, in order to comply with the Rule.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

1. Section 9.1 of the Agreement shall be amended by adding to the remedies provisions included at the end thereof the following language in subsection (y) following the words "provided, however,":

"that if the deadline for submitting applications to participate in the reverse auction portion of the Auction has passed, then the Sale Call Option may not be exercised until one day after the results of the Auction are announced by the FCC by public notice and such notice does not indicate that the FCC has accepted SMCCCD's bid for relinquishment of the spectrum usage rights associated with the FCC License, and provided further that"

With this amendment, Section 9.1 will read in its entirety (the additional language being underlined herein for reference only):

9.1 Triggering Events. To the extent that the occurrence of any of the following conditions or events (“**Triggering Events**”) shall result in a Material Adverse Effect:

A. Default in Other Agreements. Breach or default by SMCCCD with respect to any material term of (a) one or more items of Indebtedness or (b) any loan agreement, mortgage, indenture or other agreement relating to such item(s) of Indebtedness, if the effect of such breach or default is to cause, or to permit the holder or holders of that Indebtedness (or a trustee on behalf of such holder or holders) to cause, that Indebtedness to become or be declared due and payable prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be (upon the giving or receiving of notice, lapse of time, both, or otherwise); or

B. Breach of Certain Covenants. Failure of SMCCCD to perform or comply with any term or condition contained in subsection 6.2, 6.8, 6.10 or Section 7 or 8 of this Agreement; or

C. Breach of Warranty. Any representation, warranty, certification or other statement made by SMCCCD in any Funding Document shall be false in any material respect on the date as of which made; or

D. Other Defaults Under Funding Documents. SMCCCD shall default in the performance of or compliance with any term contained in (a) this Agreement or any of the Collateral Documents, other than any such term referred to in any other provision of this subsection 9.1, and such default shall not have been remedied or waived within 10 Business Days after the earlier of (i) an Officer of SMCCCD becoming aware of such default or (ii) receipt by SMCCCD of notice from LPN of such default or (b) the Option Agreement or the Bid Management Agreement; or

E. Involuntary Appointment of Receiver, etc. A decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over SMCCCD, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of SMCCCD for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of SMCCCD, and any such event described in this subsection 9.1E shall continue for 60 days unless dismissed, bonded or discharged; or

F. Voluntary Bankruptcy; Appointment of Receiver, etc.

(i) SMCCCD shall have an order for relief entered with respect to it or commence a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or SMCCCD shall

make any assignment for the benefit of creditors; or

(ii) SMCCCD shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or the Governing Body (or any committee thereof) of SMCCCD shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to in clause (i) above or this clause (ii); or

G. Judgments and Attachments. Any money judgment, writ or warrant of attachment or similar process related to the Station shall be entered or filed against SMCCCD or any of the Station's assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of 30 days (or in any event later than five days prior to the date of any proposed sale thereunder); or

H. Invalidity of Funding Documents; Failure of Security; Repudiation of Reimbursement Obligations. At any time after the execution and delivery thereof, (i) any Funding Document or any provision thereof, for any reason other than the satisfaction in full of all Reimbursement Obligations, shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void, (ii) LPN shall not have or shall cease to have a valid and perfected First Priority Lien in the Proceeds purported to be covered by the Collateral Documents, in each case for any reason other than the failure of LPN to take any action within its control, or (iii) SMCCCD shall contest the validity or enforceability of any Funding Document or any provision thereof in writing or deny in writing that it has any further liability under any Funding Document to which it is a party or any provision thereof; or

I. FCC License.

(i) The FCC License shall have been cancelled, terminated, suspended, revoked, denied renewal, materially adversely modified, or otherwise ceased to be in full force and effect; or

(ii) The FCC, any Communications Regulatory Authority or any other Government Authority commences an action or proceeding that could lead to the cancellation, termination, suspension, revocation, non-renewal, or material adverse modification of any FCC License; or

J. Reimbursement Event. A Reimbursement Event (as such term is defined in the Option Agreement) shall have occurred:

THEN (i) upon the occurrence of any Triggering Event described in subsection 9.1E or 9.1F, each of the Subsidy Payments made on or prior to such date, shall automatically become immediately due and payable, without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by SMCCCD, and the obligation of LPN to make any Subsidy Payment shall thereupon terminate; and (ii) upon the occurrence and during the continuation of any other Triggering Event, LPN may, by written notice to SMCCCD, either, in LPN's sole discretion (x) declare all or any portion of the Subsidy Payments made on or prior to such date, to be, and the same shall forthwith become, immediately due and payable, and the obligation of LPN to make any Subsidy Payment hereunder shall thereupon terminate, or (y) exercise the Sale Call

Option upon the terms and conditions set forth in the Option Agreement, in which case LPN shall be deemed to have waived its right to repayment of the Reimbursement Obligations with respect to such Triggering Event and the obligation of LPN to make Subsidy Payments shall continue; provided, however, that if the deadline for submitting applications to participate in the reverse auction portion of the Auction has passed, then the Sale Call Option may not be exercised until one day after the results of the Auction are announced by the FCC by public notice and such notice does not indicate that the FCC has accepted SMCCCD's bid for relinquishment of the spectrum usage rights associated with the FCC License; and provided further that if the occurrence of a Triggering Event is the result of SMCCCD's willful breach of any obligations under this Agreement or the other Funding Documents (a "Willful Breach"), then, without limiting any other rights or remedies of LPN, SMCCCD's repayment of Subsidy Payments pursuant to clause (i) or (ii) shall be made together with interest thereon at a rate equal to 8% per annum. For the avoidance of doubt, failure by SMCCCD to discharge its obligations pursuant to the Sale Call Option granted under the Option Agreement will constitute a Willful Breach hereunder.

2. **Entire Agreement; Counterparts.** This Amendment and the Agreement which it amends constitutes the entire understanding between the Parties with regard to the subject matter hereof and supersedes any prior understandings respecting the subject matter hereof. This Amendment may be signed in any number of counterparts, each of which shall be an original for all purposes, but all which taken together shall constitute only one Amendment. The Parties agree that transmission of this Amendment with facsimile or electronic "pdf" signatures shall bind the Parties in the same manner as if the Party's original signatures had been delivered.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the date and year first above written.

SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT



By:

Name: Kathy Blackwood

Title: Executive Vice Chancellor

LOCUSPOINT NETWORKS, LLC

By: _____

Name:

Title:

EXHIBIT B

BID MANAGEMENT AGREEMENT

This BID MANAGEMENT AGREEMENT (this "Agreement") is entered into and effective this May 16, 2013, by and among San Mateo County Community College District (the "District"), a community college district of the State of California, and LocusPoint Networks, LLC ("LPN"), a Delaware limited liability company (the District and LPN each individually a "Party" and collectively, the "Parties").

RECITALS

WHEREAS, the District operates noncommercial educational television Station KCSM-TV (RF Channel 43), San Mateo, California (FCC Facility ID No. 58912) ("KCSM") and holds the License issued by the Federal Communications Commission ("FCC") for KCSM; and

WHEREAS, the District has determined that the spectrum usage rights associated with KCSM will be made available for relinquishment in the broadcast incentive auction to be conducted by the FCC pursuant to Section 6403 of the Middle Class Tax Relief and Job Creation Act of 2012 (the "Auction"); and

WHEREAS, the Parties have entered into a Funding Agreement, a Put/Call Option Agreement, and certain other agreements (collectively, the "Funding Documents"), each dated as of the date hereof, pursuant to which LPN will provide funding to the District to support the District's ongoing operation of KCSM, and the District has committed, among other things, to share with LPN proceeds from KCSM's participation in the Auction and to enter into this Agreement; and

WHEREAS, the District and LPN are each committed to working cooperatively to effectuate the terms of the Funding Documents and this Agreement and to maximize the proceeds received in the Auction in exchange for the relinquishment of the spectrum usage rights associated with the License;

WHEREAS, until and through the conclusion of the Auction, the Parties may wish to coordinate with one another regarding bids and bidding strategies in the Auction; and

WHEREAS, LPN has substantial expertise in the development of strategies for participating in sophisticated auctions such as the Auction, has access to personnel who are familiar with prior auctions conducted by the FCC, and has access to significant resources that can be employed brought to bear on the District's participation in the Auction; and

WHEREAS, the District wishes to hire LPN as a consultant to develop strategies for successfully participating in the Auction and to appoint LPN as its exclusive agent to manage KCSM's participation in the Auction in accordance with the terms of this Agreement and in conformance with, and subject to any limitations contained in, the FCC's Rules, and LPN is able and willing to perform the duties assigned to it hereunder.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

ARTICLE I DEFINITIONS

For purposes of this Agreement:

“Agreement” means this Bid Management Agreement, as amended from time to time.

“Auction” means the broadcast incentive auction to be conducted by the FCC pursuant to Section 6403 of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6403, 126 Stat. 156, 225-30 (2012).

“Authorized Representative” means a person designated by a Party to implement that Party’s obligations under this Agreement, and “Authorized Representatives” means more than one Authorized Representative.

“FCC” means the Federal Communications Commission or any successor agency.

“FCC’s Rules” means the requirements or prohibitions contained at the relevant time in all applicable laws (including the Communications Act of 1934, as amended through such time), rules, regulations (including Title 47 of the Code of Federal Regulations), policies and orders of the FCC or any other relevant governmental agency.

“License” means all licenses and authorizations issued by the FCC to construct and operate KCSM and all spectrum usage rights associated therewith.

“Minimum Bid Amount” means Three Million Dollars (\$3,000,000).

ARTICLE II BID MANAGEMENT

2.1 As an express exercise of its sole right to determine whether and how KCSM will participate in the Auction, the District hereby appoints LPN to act as its exclusive consultant and agent to develop and implement any and all strategies appropriate to such participation. Such participation shall be premised on achieving the District’s objective of relinquishing all spectrum usage rights associated with the License for the maximum value possible, but in any event for a value not less than the Minimum Bid Amount.

2.2 As the exclusive bidding consultant and agent for the District under this Agreement, LPN will have the obligation to:

2.2.1 Keep the District informed of material developments in the FCC’s rulemaking and other proceedings designed to adopt rules that will apply to the Auction. LPN may, in its sole discretion, participate in any such proceedings, either in its own name or as part of a group or association of participating parties, to advocate the adoption

of provisions in the FCC's Rules that would allow the District to participate fully in the Auction with the opportunity to relinquish spectrum usage rights associated with the License at their desired value;

2.2.2 Timely prepare for review and submission by the District such filings and applications as may be required by the FCC's Rules for the District to participate fully in the Auction;

2.2.3 Advance to the District and pay to the FCC, any filing fees, deposits or other payment obligations that the FCC's Rules may require for the District to participate in the Auction;

2.2.4 Establish a general bidding strategy for maximizing the value in the Auction of the spectrum usage rights associated with the License;

2.2.5 Appoint qualified personnel to act as the District's authorized bidders in the Auction, and train and supervise such personnel to assure their satisfactory performance of the duties associated with authorized bidders in the Auction;

2.2.6 Provide training to the District to assure compliance with all requirements of the FCC's Rules applicable to "applicants" in the Auction, including, to the extent appropriate, training for the officers, directors and agents of the District who may be individually subject to compliance with the FCC's Rules during the Auction;

2.2.7 Timely submit all bids in the Auction for the District as may be required for continued participation in the Auction until successful relinquishment of the spectrum usage rights associated with the License; *provided, however*, that LPN shall not place any bid that would result in such relinquishment for less than the Minimum Bid Amount;

2.2.8 Throughout the Auction, keep the District informed concerning the bidding process, including, but not limited to, the results of each bidding round and expected bids in the next bidding round;

2.2.9 Comply with all regulatory requirements imposed on participants in the Auction, including, but not limited to, any restrictions on communications with other bidders during the Auction, as may be imposed under any so-called "anti-collusion rules" adopted as part of the FCC's Rules;

2.2.10 Prepare, on behalf of the District, responses to any requests for information which the FCC may make prior to, during, or following completion of the Auction;

2.2.11 Participate with the District in any meetings or telephone conferences with the FCC as the FCC may request prior to, during, or following completion of the Auction;

2.2.12 Communicate with the FCC, on behalf of the District, regarding logistical matters relevant to participation in the Auction and the mechanics of obtaining any proceeds resulting from the District's participation in the Auction;

2.2.13 If, at the conclusion of the Auction, the FCC accepts the bid for relinquishment of the spectrum usage rights associated with the License, prepare for the District all filings and applications as may be required to complete the process of relinquishment, including, but not limited to, advancing to the District, and paying to the FCC on their behalf, any filing or other fees associated with being a winning bidder in the Auction; and

2.2.14 Take all such other actions as may be reasonably required by the District as its bidding consultant and agent to achieve its successful participation in the Auction at a price that is at or above the Minimum Bid Amount.

2.2.15 Consult with the District regarding all regulatory processes associated with the "repacking" of KCSM to a new channel assignment if, at the conclusion of the Auction, the FCC has not accepted the District's bid for relinquishment of the spectrum usage rights associated with the License. Such consultations will include involvement with the District in (a) discussions with the FCC regarding the channel reassignment process, (b) processes for obtaining the maximum reimbursement by the U.S. government of expenses associated with repacking, and (c) preparing all filings and applications as may be required by the FCC timely to complete the repacking process.

2.3 The Parties agree that the spectrum usage rights associated with the License should not be relinquished for an amount that is below the Minimum Bid Amount. In implementing the strategy developed for the Auction, LPN will not, without the prior written approval of the District, submit a bid that would cause such an event to occur.

2.4 The District expressly acknowledges that in performing its duties hereunder, LPN may engage independent consultants, agents and subcontractors at its own expense. LPN agrees that any such engagement shall be undertaken under LPN's direction and supervision, and LPN shall remain primarily responsible for satisfaction of its obligations hereunder notwithstanding such engagement.

2.5 In performing its duties under this Agreement, LPN will comply in all material respects with the requirements of the FCC's Rules that are relevant to LPN's performance hereunder.

2.6 In furtherance of its participation in the Auction, the District hereby agrees that it will cooperate with LPN in the fulfillment of LPN's obligations hereunder, and that it will, at LPN's request:

2.6.1 Participate in such training as to the FCC's Rules for the Auction as LPN may provide in order to ensure compliance at all times with such FCC Rules;

2.6.2 Provide LPN with such information as LPN may require in order for it to complete all filings and applications required for participation in the Auction, and execute such applications as the FCC may require for such participation;

2.6.3 Designate prior to the commencement of the Auction one or more individuals who shall represent their interests during the Auction and who (a) are authorized to commit the District with respect to decisions made during the Auction, (b) will have been trained by LPN to be familiar with the FCC's Rules applicable to the Auction, as well as with Auction processes and procedures, and (c) will be available throughout the Auction to consult with LPN in a prompt and timely manner;

2.6.4 At LPN's request, participate in such meetings with the FCC as the FCC may request prior to, during, or following the completion of the Auction in furtherance of the District's participation therein;

2.6.5 Take all such other actions as may be reasonably required or as LPN, acting in its capacity of bidding consultant and agent, may request in order for the District to successfully participate in the Auction and relinquish the spectrum usage rights associated with the License at a price that is at or above the Minimum Bid Amount; and

2.6.6 Upon the request and advice of LPN, give commercially reasonable consideration to changes in the Minimum Bid Amount.

2.7 During the Term hereof, without LPN's express written consent, the District may not directly or indirectly solicit, engage or contract with any other person or entity for the purpose of consulting with, acting as an agent for, advising, or managing the activities of, the District with regard to participation in the Auction or in any proceeding before the FCC relating to the FCC Rules applicable to the Auction or any related matter arising out of the Auction, or with regard to the sale, assignment or transfer of the License, except that the District may consult with District counsel and its established communications counsel.

2.8 The Parties acknowledge that the FCC has not adopted final rules for the conduct of the Auction and that the adoption of those rules could affect their respective obligations as set forth herein or any other terms of this Agreement. If that should occur, the Parties agree to negotiate in good faith to modify this Agreement to the extent required for the intent of the Parties in this Agreement and in the Funding Documents – *i.e.*, that the District will participate fully in the Auction so as to relinquish its spectrum usage rights at a bid amount at or above the Minimum Bid Amount, and that LPN will be the District's exclusive consultant (except as set forth above) and agent with respect to the District's participation in the Auction as contemplated in this Agreement – to be preserved to the maximum extent reasonably possible under the FCC's Rules for the Auction as adopted from time to time. The Parties expressly agree that, if they are unable to reach an agreement on any modifications to this Agreement necessary to comply with the FCC's Rules, then this Agreement shall remain binding and control each Party's participation in the Auction to the maximum extent then permitted under the FCC's Rules.

ARTICLE III CONTROL OF KCSM LICENSE AND OPERATIONS

Notwithstanding anything contained in this Agreement that may provide for, or be construed to provide for, the contrary, the District will at all times maintain *de jure* and *de facto* control over the License and over KCSM, including control over KCSM's programming, personnel, finances, and other operations. During the term of this Agreement, the District will, and will take all actions necessary to, maintain the License in full force and effect and in good standing in accordance with its terms and in compliance in all material respects with the Communications Act of 1934, as amended, and the FCC's Rules. Without limiting the generality of the foregoing, the District will timely file and prosecute any necessary modification or renewal applications relating to KCSM, and will make such other submissions to the FCC as are necessary to maintain the License in full force and effect and in good standing. The District will operate KCSM, and perform all of its obligations with respect thereto, in the ordinary course of business consistent with past practices, and will maintain full and complete control over the Station's personnel, programming and finances.

ARTICLE IV TERM OF AGREEMENT; TERMINATION

4.1 Term. This Agreement will become effective on the date of its execution and will continue in effect (unless terminated by the Parties) until the later of (i) the date on which spectrum usage rights associated with the License have been relinquished in the Auction and payment therefor has been received by the parties entitled thereto under the Funding Documents or (ii) the date on which the process of repacking KCSM has been completed, KCSM is operating on its newly assigned frequency, and reimbursement by the U.S. government of the costs associated with repacking have been paid.

4.2 Termination of Agreement. This Agreement may be terminated before the end of the Term:

4.2.1 by mutual written consent of the Parties;

4.2.2 by the District in the event that LPN has materially violated or breached any agreement contained in this Agreement and such material violation or breach has prevented the District's participation in the Auction or resulted in a material violation of the FCC's Rules, but only if such material violation or breach has not been waived in writing by the District or cured by LPN within thirty (30) days after its receipt of written notice thereof from the District;

4.2.3 by the District in the event that LPN fails to make any Subsidy Payment within 34 days of its due date (as described in Section 2 of the Funding Agreement).

4.2.4 by LPN in the event that the District has materially violated or breached any agreement contained in this Agreement and such material violation or breach has prevented the District's participation in the Auction or has materially hindered, delayed or prevented LPN's satisfaction of any obligation undertaken hereunder, but only if such violation or breach has not

been waived in writing by LPN or cured by the District within ten (10) days after its receipt of written notice thereof from LPN;

4.2.5 by either Party, upon written notice to the other Party, if any of the Funding Documents has been terminated by the terminating Party by reason of a material uncured breach thereof by the other Party.

ARTICLE V OTHER INTERESTS OF LPN

LPN has notified the District that it holds financial interests in other television broadcast stations (including interests in another licensed broadcast station that operates in the San Francisco Designated Market Area (DMA)), and that it may acquire interests in other licensed television broadcast stations operating in the San Francisco DMA or other DMAs that may participate in the Auction. The District acknowledges that LPN may participate in the Auction through its interests in these or other licensed television broadcast stations, and that in such case the Parties will comply with the FCC's Rules as they may be promulgated from time to time, including complying with such disclosure obligations as the FCC may require for participation in the Auction.

ARTICLE VI COMPENSATION

In exchange for LPN's provision of services hereunder, the District will pay to LPN a fee of Ten Thousand Dollars (\$10,000) per calendar quarter commencing on the first day of the first calendar quarter immediately following the date on which this Agreement is executed, and continuing until Subsidy Payments are no longer being made under the Funding Agreement or until this Agreement is terminated in accordance with its terms, whichever is earlier. The Parties agree and acknowledge that LPN shall continue to be obligated to provide services under this Agreement for the entire term of this Agreement, even if such term extends beyond the period during which fee payments must be made under this Article VI.

ARTICLE VII INDEMNIFICATION

7.1 Indemnification by the District. The District shall indemnify and hold harmless LPN as well as its affiliated companies and entities, officers, directors, employees and agents from all liabilities, claims, costs, damages, fines, forfeitures and expenses ("Losses") arising out of (i) any breach of any representation, warranty, obligation or performance of the District under this Agreement (ii) any actions by the District that are inconsistent with the FCC's Rules or the District's obligations to the FCC as holder of the License, or (iii) any negligence or willful misconduct by the District relative to its obligations under this Agreement.

7.2 Indemnification by LPN. LPN shall indemnify and hold harmless the District, as well as its officers, directors, employees and agents, from all Losses arising out of (i) any breach of any representation, warranty, obligation or performance of LPN under this Agreement, (ii) any actions by LPN that are inconsistent with the FCC Rules or (iii) any gross negligence or willful misconduct by LPN relative to its obligations under this Agreement.

**ARTICLE VIII
MISCELLANEOUS**

8.1 Amendment. This Agreement may only be amended by mutual written agreement of the Parties.

8.2 Choice of Law. The Agreement shall be governed by and construed in accordance with the laws of the State of California.

8.3 Confidentiality. A Party receiving Confidential Information ("Receiving Party") from the other party ("Disclosing Party") will refrain from directly or indirectly disclosing the Disclosing Party's Confidential Information and may not use the Disclosing Party's Confidential Information for any purpose whatsoever, except for the purpose for which it was provided and as contemplated and authorized by this Agreement. The term "Confidential Information" shall mean for purposes of this Agreement all non-public information and material, whether disclosed or made available in writing, electronically, orally, visually or otherwise, regarding the business of the Disclosing Party and third parties who have furnished confidential, non-public information to the Disclosing Party and all other information or material disclosed to the Receiving Party by the Disclosing Party or its affiliates or representatives that should be understood by a reasonable business person to be confidential. Notwithstanding the foregoing, the Receiving Party may use and disclose to its employees, agents, and advisers (collectively "Representatives") the Confidential Information of the Disclosing Party as reasonably necessary to enable the Receiving Party to fulfill its obligations and realize its benefits under this Agreement, *provided, however*, (a) that the Receiving Party shall make all commercially reasonable efforts to ensure that each such Representative acknowledges and complies with this Section 8.3 as if such Representative were a party to the Section, and (b) that the Receiving Party shall remain responsible and liable for such Representative's compliance with this Section. The Receiving Party shall use the same degree of care to protect the Confidential Information of the Disclosing Party from unauthorized use or disclosure as it uses to protect its own information of a similar nature, but in no event less than reasonable care. Notwithstanding the foregoing, the Parties acknowledge that the District is subject to the open records requirements of California law. The District shall not disclose any Confidential Information that may lawfully be withheld under that law.

8.4 Notices. All notices or other communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered, delivered by electronic mail acknowledged as having been received, or mailed by registered or certified mail (return receipt requested, postage prepaid) or by reputable overnight courier addressed to the following or to any replacement address subsequently identified in writing to all other parties to this Agreement:

If to the District:

Executive Vice Chancellor
San Mateo County Community College District
3401 CSM Drive
San Mateo, CA 94402
Phone: 650-358-6790
Email: roecksj@smccd.edu

With copies (which will

not constitute notice) to:

Lawrence M. Miller
Schwartz, Woods & Miller
1233 20th Street, NW, Suite 610
Washington, D.C. 20036-7322
Phone: (202) 833-1700
Email: miller@swmlaw.com

Jan Roecks
San Mateo County Community College District
3401 CSM Drive
San Mateo, CA 94402
Phone: 650-358-6790
Email: roecksj@smccd.edu

Eugene Whitlock
400 County Center, 6th Floor
Redwood City, CA 94063

If to LPN:

William D. deKay
LocusPoint Networks, LLC
Pleasanton Corporate Commons
6200 Stoneridge Mall Road, Suite 300
Pleasanton, CA 94588
Phone: 650-678-2508
Email: bill@locuspointnetworks.com

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

Jonathan V. Cohen
Wilkinson Barker Knauer, LLP
2300 N Street, NW, Suite 700
Washington, D.C. 20037-1128
Phone: (202) 383-3416
Email: joncohen@wbklaw.com

Any notice sent by mail as above provided shall be deemed delivered upon receipt or attempted delivery. Any notice personally delivered shall be deemed delivered on the date delivery is made to the address specified above. Copies of all notices or other communications (which shall not constitute notice hereunder) shall be sent simultaneously to counsel designated by the Parties by written notice.

8.5 Relationship. Nothing in this Agreement shall be construed to render the Parties as partners, joint venturers or affiliates under the FCC's Rules or to impose upon any of them any liability as such.

8.6 Entire Agreement. This Agreement and the Funding Documents constitute the entire understanding between the Parties and supersede any prior understandings respecting the subject matter hereof.

8.7 Assignment; Binding Effect. This Agreement may not be assigned by LPN or by the District without the express written consent of the other Party, which may be delayed, conditioned or withheld in such Party's sole unfettered discretion; *provided, however*, that LPN may assign its rights and obligations under this Agreement to any entity in which it has a controlling interest or which is under common control, in which event LPN nevertheless shall remain fully and primarily liable for the performance of all obligations imposed on LPN under this Agreement. This Agreement shall be binding upon and inure to the benefit of the successors and legal assigns of the Parties.

8.8 Further Assurance. The Parties shall execute and deliver such further instruments and perform such further acts as may reasonably be required to carry out the intent and purposes of this Agreement.

8.9 Severability. In the event any provision of this Agreement is held to be unenforceable, such unenforceability shall not affect any other provision hereof, and this Agreement shall be construed to the greatest extent possible as if such unenforceable provision had never been contained herein, provided the economic benefit of this Agreement to the parties is not significantly diminished.

8.10 Limitation of Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING FROM, OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE PARTY KNEW OR HAD REASON TO KNOW OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES, EXCEPT THAT THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO LIMIT (A) DAMAGES RESULTING FROM EITHER PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, FRAUD, OR FRAUDULENT MISREPRESENTATION; (B) DAMAGES CAUSED BY ANY BREACH BY A PARTY OF ITS OBLIGATIONS UNDER SECTION 8.3 (CONFIDENTIALITY); OR (C) EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER ARTICLE VII (INDEMNIFICATION).

8.11 Headings. All article, section and paragraph titles or captions contained in this Agreement are for convenience only and shall not be deemed part of the text of this Agreement. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the context may require.

8.12 Counterparts. This Agreement may be signed in counterparts, each of which shall be an original for all purposes, but both which taken together shall constitute only one Agreement.

[remainder of this page intentionally left blank – signature page follows]

SIGNATURE PAGE - BID MANAGEMENT AGREEMENT

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

**SAN MATEO COUNTY COMMUNITY COLLEGE
DISTRICT**

By: 

Name: James W. Keller

Title: Executive Vice Chancellor

LOCUSPOINT NETWO KS, LLC

By: 

Name: William de Kroy

Title: CEO

AMENDMENT TO BID MANAGEMENT AGREEMENT

This Amendment ("Amendment") is entered into on December 8, 2015 ("Amendment Effective Date") by San Mateo County Community College District (the "District"), a community college district of the State of California, and LocusPoint Networks, LLC ("LPN"), a Delaware limited liability company, to amend the Bid Management Agreement between the District and LPN, dated as of May 16, 2013 ("Agreement"). Capitalized terms that are used but not defined herein shall have the meaning given to such terms in the Agreement.

WHEREAS, pursuant to the Agreement, LPN agreed to provide certain specified services to the District in connection with the Auction. Following the execution of the Agreement, the FCC issued a new regulation, 47 C.F.R. § 1.2205, and related guidance (collectively, "Rule") prohibiting communications between Auction participants and certain of their affiliates, on the one hand, and "covered television licensees" and "forward auction applicants" (as such terms are defined in the FCC's Rules), on the other hand, regarding Auction bids and bidding strategies. This prohibition is applicable from the deadline for submitting applications to participate in the reverse auction portion of the Auction ("Application Deadline") until the results of the Auction are announced by public notice ("Quiet Period"). As a result of the promulgation of the Rule and pursuant to Section 2.8 and 8.1 of the Agreement, the Parties hereby amend the Agreement to modify LPN's obligations during the Quiet Period to comply with the Rule.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

1. The Agreement shall be amended as of the Amendment Effective Date as follows:
 - a. Section 2.2.2 of the Agreement shall be deleted and replaced with the following: "Before the Quiet Period, timely prepare for review and submission by the District of the application for KCSM to participate fully in the Auction;"
 - b. Section 2.2.3 of the Agreement shall be deleted and replaced with the following: "[Reserved.]"
 - c. Section 2.2.4 of the Agreement shall be deleted and replaced with the following: "Prior to the Application Deadline, establish a general bidding strategy for maximizing the value in the Auction of the spectrum usage rights associated with the License;"
 - d. Section 2.2.5 of the Agreement shall be deleted and replaced with the following: "Train and supervise the qualified personnel that the District appoints to act as its authorized bidders in the Auction to assure their satisfactory performance of the duties associated with authorized bidders in the Auction;"
 - e. Section 2.2.7 of the Agreement shall be deleted and replaced with the following: "[Reserved.]"
 - f. Section 2.2.10 of the Agreement shall be deleted and replaced with the following: "Prepare, on behalf of the District, responses to any requests for information which the FCC may make prior to or following, but not during, the Quiet Period;"
 - g. Section 2.2.11 of the Agreement shall be deleted and replaced with the following: "Participate with the District in any meetings or telephone conferences with the FCC as the FCC may request prior to or following, but not during, the Quiet Period;"

- h. Section 2.2.12 of the Agreement shall be deleted and replaced with the following: “Communicate with the FCC on behalf of the District, prior to or following, but not during, the Quiet Period, regarding logistical matters relevant to participation in the Auction and the mechanics of obtaining any proceeds resulting from the District’s participation in the Auction;”
 - i. Section 2.2.13 of the Agreement shall be deleted and replaced with the following: “If, at the conclusion of the Auction, the FCC accepts the bid for relinquishment of the spectrum usage rights associated with the License, prepare for the District all filings and applications as may be required to be filed after the Quiet Period to complete the process of relinquishment;”
 - j. The last sentence of Section 2.3 of the Agreement shall be deleted and replaced with the following: “In implementing the strategy developed for the Auction, the District shall cause its authorized bidder to refrain from submitting a bid that would cause such an event to occur.”
 - k. Two new final sentences shall be added to the end of Section 2.4 as follows: “The Parties agree and acknowledge that LPN has engaged PricewaterhouseCoopers Advisory Services LLC (“PwC”) to serve as LPN’s subcontractor and agent and that PwC may provide to the District on behalf of LPN certain of the services set forth in Section 2.2 during the Quiet Period to the extent that PwC can do so in compliance with the FCC’s Rules and LPN cannot. To facilitate this arrangement, the District has executed a Letter of Authorization in the form attached to this Agreement as Attachment A.”
 - l. Section 2.6.3 of the Agreement shall be deleted and replaced with the following: “Designate prior to the start of the Quiet Period up to three individuals who shall serve as the District’s authorized bidders during the Auction and who (a) are authorized to place bids on behalf of the District during the Auction, (b) will be trained by LPN to be familiar with the FCC’s Rules applicable to the Auction, as well as with Auction processes and procedures, and (c) will consult in every round during the Auction with PwC in a prompt and timely manner;”
 - m. The executed Attachment A attached to this Amendment shall be attached to the Agreement as Attachment A to the Agreement.
2. Entire Agreement; Counterparts. This Amendment and the Agreement which it amends constitutes the entire understanding between the Parties and supersedes any prior understandings respecting the subject matter hereof. This Amendment may be signed in any number of counterparts, each of which shall be an original for all purposes, but all which taken together shall constitute only one Amendment. The Parties agree that transmission of this Amendment with facsimile or electronic “pdf” signatures shall bind the Parties in the same manner as if the Party’s original signatures had been delivered.

[remainder of this page intentionally left blank – signature page follows]

SIGNATURE PAGE – AMENDMENT TO BID MANAGEMENT AGREEMENT

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the date and year first above written.

SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT

By: Kathy Blackwood

Name: Kathy Blackwood
Title: Executive Vice Chancellor

LOCUSPOINT NETWORKS, LLC

By: William de Ky
Name: William de Ky
Title: ceo

ATTACHMENT A

LETTER OF AUTHORIZATION

Pursuant to Section 2.4 of the Bid Management Agreement (the "Agreement"), dated as of May 16, 2013, between LocusPoint Networks, LLC ("LPN") and San Mateo County Community College District (the "District"), PricewaterhouseCoopers Advisory Services LLC ("PwC") has been designated by LPN as LPN's subcontractor and agent in carrying out certain of LPN's obligations under the Agreement.

In particular, between the deadline for submitting applications to participate in the broadcast incentive auction and the announcement of the auction results (the FCC's "quiet period"), LPN will be unable to communicate with the District regarding bids or bid strategy. Therefore, LPN has designated PwC to be responsible for performing LPN's obligations under Section 2.2 of the Agreement and various of its subsections, including monitoring and assisting the District with its participation of Station KCSM-TV (RF Channel 43), San Mateo, California (FCC Facility ID No. 58912) (the "Station") in the auction. PwC is not assuming any additional duties or obligations directly to the District in connection with these services.

PwC will dedicate a member of its staff (and one alternate to act in that member's place if he or she is unable to do so) to act in LPN's place under the Agreement during the "quiet period". To the extent the District and the District's designated authorized bidders intend to take, or take, actions that are not consistent with the District's obligations under the Agreement and any related bidding strategy, PwC will notify the previously designated contact representatives of the District.

By acknowledging the designation of PwC as subcontractor and agent of LPN pursuant to Section 2.4 of the Agreement, the District agrees to cooperate with PwC in accordance with Section 2.6 of the Agreement as it performs its engagement by LPN to help ensure compliance with the FCC's rules pertaining to the Auction under the Agreement.

Acknowledged this 8th day of December, 2015.

SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT

By:



Name: Kathy Blackwood

Title: Executive Vice Chancellor

EXHIBIT C

EXECUTION VERSION

PUT/CALL OPTION AGREEMENT

This PUT/CALL OPTION AGREEMENT (the "Agreement") is entered into as of May 16, 2013 by and among San Mateo County Community College District, a California Community College District ("SMCCCD") and LocusPoint Networks LLC, a Delaware limited liability company ("LPN").

RECITALS

A. SMCCCD operates full-power noncommercial educational television station KCSM-TV (RF Channel 43), San Mateo, California (FCC Facility ID No. 58912) (the "Station") and holds all Federal Communications Commission ("FCC") licenses and authorizations necessary for the current operations of the Station (collectively, the "FCC Licenses").

B. SMCCCD has determined that it will participate in the reverse auction contemplated as part of the broadcast incentive auction to be conducted by the FCC under Section 6403 of the Middle Class Tax Relief and Job Creation Act of 2012 (the "Auction"), as the rules governing the Auction may provide, and, in the event that SMCCCD is not successful in relinquishing the Station's spectrum usage rights in the Auction, enter into a transaction for the assignment of the FCC Licenses and transfer of the Station's assets (a "Sale") to a qualified buyer (a "Buyer").

C. SMCCCD wishes to obtain financial support in funding the operating expenses of the Station, and LPN has expressed an interest in sharing with SMCCCD the proceeds that may result from (i) the Station's relinquishment of spectrum usage rights through participation in the Auction (the "Gross Auction Proceeds") or (ii) a Sale to a Buyer (the "Gross Sale Proceeds") in the event that SMCCCD is not successful in relinquishing the Station's spectrum usage rights in the Auction.

D. In connection with this Agreement, SMCCCD and LPN have entered into that certain Funding Agreement dated as of the date hereof (the "Funding Agreement") pursuant to which, upon the terms and conditions set forth therein, LPN has agreed to provide to SMCCCD funding in the amount of Three Million Six Hundred Thousand Dollars (\$3,600,000), to be paid in installments of Two Hundred Twenty-Five Thousand Dollars (\$225,000) (the "Subsidy Payments"), for the operating expenses of the Station as it is currently operated in compliance with the rules, regulations and policies of the FCC (the "FCC Rules").

E. The parties have agreed that in consideration of, among other things, LPN providing such funding to SMCCCD pursuant to the Funding Agreement, LPN will have the right to share a specified percentage of the Gross Auction Proceeds or Gross Sale Proceeds, as the case may be.

F. In furtherance of these objectives, the parties wish to grant the Options (as defined below) contained in this Agreement on the terms and subject to the conditions set forth herein.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, and other good and valuable consideration (the receipt and sufficiency of which the parties hereto acknowledge), the parties hereto agree as follows:

1. LPN Share. The LPN Share shall be equal to thirty-six and one half percent (36.5%) multiplied by either (i) the Gross Auction Proceeds or (ii) the Gross Sale Proceeds, as applicable (the "LPN Share"), and shall be subject to the following adjustments:

a. If an Auction Sale or Sale occurs before the last of the Subsidy Payments is made by LPN, then the aggregate dollar amount of any remaining Subsidy Payments that have not been paid to SMCCCD will be credited to SMCCCD as a reduction to the LPN Share.

b. In the event that LPN fails to make any Subsidy Payment within three days of its due date (as described in Section 2 of the Funding Agreement), the LPN Share shall be reduced by an amount equal to 2.28125% multiplied by the Gross Auction Proceeds or Gross Sale Proceeds, as applicable, for each such failure, e.g., from 36.5% to 34.21875% in the case of one late payment. In the event that LPN fails to make any Subsidy Payment within 34 days of its due date (as described in Section 2 of the Funding Agreement), SMCCCD shall have the right to terminate this Agreement, except if LPN's non-payment is due to a material breach by SMCCCD of a Funding Document.

c. The LPN Share shall be increased by the amount of any application fees or other out-of-pocket fees or expenses advanced by LPN to the FCC on SMCCCD's behalf pursuant to Section 2.2.13 of the Bid Management Agreement by and between SMCCCD and LPN dated as of the date hereof (the "Bid Management Agreement").

2. Auction Call Option.

a. SMCCCD hereby grants to LPN, upon all of the terms and subject to all of the conditions set forth herein, an option (the "Auction Call Option") to receive the LPN Share of the proceeds derived from the relinquishment of the Station's spectrum usage rights in connection with the Auction (an "Auction Sale"). LPN may exercise its Auction Call Option at any time until thirty (30) days following the deposit of the Gross Auction Proceeds into the Proceeds Account (as defined in the Funding Agreement) by delivering to SMCCCD a written notice (an "Auction Call Notice"), which Auction Call Notice shall state that LPN thereby exercises the Auction Call Option, without condition or qualification, to cause the LPN Share to be distributed to LPN in accordance with this Agreement. Following receipt of an Auction Call Notice from LPN, (i) if the FCC allows the LPN Share to be paid directly to LPN, SMCCCD will make any and all necessary filings with, and requests to, the FCC to cause such direct payment to be made to LPN using information to be provided by LPN to SMCCCD in writing, and (ii) if applicable rules of the FCC do not permit the LPN Share to be paid directly to LPN, SMCCCD shall cause the Gross Auction Proceeds to be deposited into the Proceeds Account and shall, within five (5) calendar days thereafter, take all necessary actions to cause the LPN Share to be paid to LPN by wire transfer of immediately available funds. In the event that SMCCCD receives the Gross Auction Proceeds prior to receiving an Auction Call Notice, then SMCCCD will deposit the LPN Share into the Proceeds Account and shall pay the LPN Share to LPN as soon as practicable thereafter.

b. If the date specified by the FCC as the deadline for the filing of applications to participate in the Auction has not occurred by the three-year anniversary of the date of this Agreement, LPN and SMCCCD will negotiate in good faith for a period of not more than ninety (90) days (which such period the parties may extend by their mutual agreement) regarding whether additional Subsidy Payments should be made beyond the date on which LPN is scheduled to make the last Subsidy Payment (the "Subsidy Termination Date") and, if so, to what extent the LPN Share should be adjusted. In the event that the parties do not agree to terms under which additional Subsidy Payments would be made or the LPN Share adjusted, LPN shall have the ability to offer to make up to four (4) additional quarterly Subsidy Payments to SMCCCD (each an "Extension Subsidy Payment") over the ensuing one (1) year. SMCCCD shall have the right to accept or decline LPN's offer to make Extension Subsidy Payments. If SMCCCD accepts LPN's offer of Extension Subsidy Payments, then for each Extension Subsidy Payment made by LPN, the LPN Share shall be increased by an amount equal to 2.28125% multiplied by the Gross Auction Proceeds or Gross Sale Proceeds, as applicable, e.g., from 36.5% to 38.78125% in the case of one Extension Subsidy Payment. If SMCCCD declines LPN's offer of Extension Subsidy Payments, SMCCCD shall be responsible for financing continuing operations of the Station and the LPN Share shall not change. In either event, the Subsidy Termination Date will be extended for the period to which the offered Extension Subsidy Payments apply.

3. Sale Call Option.

a. SMCCCD hereby grants to LPN, upon all of the terms and subject to all of the conditions set forth herein, an option (the "Sale Call Option") to cause SMCCCD to participate in a Sale (a "Call Option Sale") to a Buyer identified by LPN that is acceptable to SMCCCD (it being understood that SMCCCD's approval of such Buyer will be withheld only if SMCCCD demonstrates to LPN's reasonable satisfaction that Buyer would not be qualified to hold the FCC Licenses); *provided*, that if LPN's identification of a Buyer is not permitted by FCC Rules and/or California law, then SMCCCD shall identify a Buyer in accordance with SMCCCD's obligations under California law. LPN will be entitled to receive the LPN Share of the proceeds derived from a Call Option Sale upon the consummation of such a transaction.

b. The Sale Call Option will be exercisable for a period (the "Sale Call Option Period") ending on the Option Termination Date and beginning on the earlier to occur of the following: (i) the date that SMCCCD withdraws from the Auction or is determined to be unqualified to bid, or if it neither withdraws or is determined to be unqualified, the date that the FCC provides notice of the results of the Auction and such notice does not indicate that the FCC has accepted SMCCCD's bid for relinquishment of the spectrum usage rights associated with the FCC Licenses; or (ii) the date on which a Triggering Event (as defined in Section 9.1 of the Funding Agreement) occurs, except for a Triggering Event under Sections 9.1E or 9.1F of the Funding Agreement; or (iii) thirty (30) days after the Subsidy Termination Date if the FCC has not by that date announced a date by which applications to participate in the Auction must be filed.

c. LPN may exercise its Sale Call Option during the Sale Call Option Period by delivering to SMCCCD a written notice (a "Sale Call Notice"), which Sale Call Notice shall state that LPN thereby exercises the Sale Call Option, without condition or qualification, to cause SMCCCD to proceed with a Call Option Sale in accordance with this Agreement.

4. Put Option.

a. LPN hereby grants to SMCCCD, upon all of the terms and subject to all of the conditions set forth herein, an option (the "Put Option," and, together with the Auction Call Option and the Sale Call Option, the "Options") to participate in a Sale (a "Put Option Sale") to a Buyer identified by SMCCCD. LPN will be entitled to receive the LPN Share of the proceeds derived from a Put Option Sale upon the consummation of such a transaction.

b. The Put Option shall become exercisable for a period (the "Put Option Period") ending on the Option Termination Date and beginning thirty (30) days following the date on which the Sale Call Option becomes exercisable.

c. Notwithstanding anything to the contrary in Section 4(b) of this Agreement, the Put Option shall not be exercisable in the event that:

i. SMCCCD is in material breach of this Agreement, the Funding Agreement or the Bid Management Agreement or the Collateral Documents (as defined in the Funding Agreement) (collectively, the "Funding Documents");

ii. a Triggering Event has occurred;

iii. there has been any change, effect, event, occurrence or state of facts that is, or is reasonably expected to be, materially adverse to the business, properties, financial condition or results of operations of the Station, taken as a whole, or an event or occurrence which would reasonably be expected to be materially adverse to the business, properties, financial condition or results of operations of SMCCCD in connection with the Station; or

iv. a Put Option Sale shall be prohibited by any applicable law, ruling, court order, statute, regulation, or judgment, whether foreign, federal, state or local.

d. SMCCCD may exercise the Put Option during the Put Option Notice Period by delivering to LPN a written notice (a "Put Notice"), which Put Notice shall state that SMCCCD intends to exercise the Put Option, without condition or qualification, to allow SMCCCD to proceed with a Put Option Sale in accordance with this Agreement. The Put Notice shall identify the Buyer.

5. Termination of Options. If not previously exercised, the Options will automatically terminate at 11:59 p.m., on December 31, 2025 (the "Option Termination Date").

6. Mechanics of a Sale. In the event that SMCCCD participates in the Auction and an Auction Sale does not occur, the parties will work together in good faith to develop a strategy to maximize the value of the Station and each shall use commercially reasonable efforts to identify a suitable Buyer and consummate a Sale. Following receipt of a valid Sale Call Notice by SMCCCD or a valid Put Notice by LPN, subject to the terms and conditions of this Agreement, SMCCCD and LPN shall proceed in good faith to negotiate, prepare and execute a definitive agreement with the Buyer for the Sale (the "Sale Agreement"). LPN will have the following rights with respect to such Sale to the maximum extent permitted under applicable law:

a. LPN will have the right to participate in, all negotiations involving SMCCCD and the Buyer

b. LPN will have the right to consult with SMCCCD regarding all regulatory processes associated with the "repacking" of KCSM to a new channel assignment if, at the conclusion of the Auction, the FCC has not accepted SMCCCD's bid for relinquishment of the spectrum usage rights associated with the FCC Licenses. Such consultations will include involvement with SMCCCD in (i) discussions with the FCC regarding the channel reassignment process, (ii) processes for obtaining the maximum reimbursement of expenses associated with repacking, and (iii) preparing all filings and applications as may be required by the FCC timely to complete the repacking process;

c. all terms and conditions of the Sale Agreement will be subject to LPN's prior consultation;

d. upon consummation of the Sale, LPN will receive the LPN Share of the proceeds by wire transfer of immediately available funds;

e. the Sale Agreement will include a general release of and covenant not to sue LPN and all of its affiliates with respect to any known or unknown claims against LPN or any of its officers, directors, members or shareholders in connection with, arising out of or related to any of the Funding Documents, the Sale Agreement or the transactions contemplated thereby; and

f. the Sale shall take place by a date that is no later than 30 days after the FCC's consent of the transfer of the FCC Licenses becomes a Final Order. For purposes of this Agreement, the term "Final Order" means action by the FCC consenting to an assignment of the FCC Licenses or a transfer of control of the Station, provided that such consent shall not have been reversed, stayed, enjoined, set aside, annulled, or suspended, and with respect to which no timely request for stay, petition for rehearing, petition for reconsideration, application for review, or notice of appeal is pending, and as to which the times for filing any such request, petition, application, notice, or appeal, or for reconsideration or review by the FCC on its own motion, shall have expired.

7. Reimbursement Event. If at any time during the Put Option Period SMCCCD is not using its commercially reasonable efforts to identify a Buyer and consummate a Sale and instead chooses to pursue alternative funding for the continued operation of the Station (a "Reimbursement Event"), then LPN may deliver to SMCCCD written notice that a Reimbursement Event has occurred and such Reimbursement Event will be a Triggering Event under Section 9.1 of the Funding Agreement.

8. Representations and Warranties of SMCCCD. As an inducement to LPN to enter into this Agreement, SMCCCD makes the following representations and warranties to LPN, each of which is true and correct on the date hereof:

a. Funding Agreement Representations and Warranties. The representations and warranties of SMCCCD contained in Section 4 of the Funding Agreement are incorporated herein by reference as if the same were set forth fully herein.

b. Organization, Standing and Authority. SMCCCD is a California Community College District duly organized, validly existing and in good standing under the laws of the State of California. SMCCCD has all requisite power and authority (i) to own, lease and use its assets as presently owned, leased and used, (ii) to conduct its business and operations as presently conducted, (iii) to execute and deliver this Agreement, and (iv) to perform and comply with all of the terms, covenants, and conditions to be performed and complied with by it hereunder;

c. Authorization and Binding Obligation. The execution, delivery and performance by SMCCCD of this Agreement, and the consummation of the transactions contemplated hereby, have been duly authorized by all necessary action of the governing Board, and SMCCCD is not aware of any further actions or approvals necessary for the consummation of any of the transactions contemplated hereby other than a sale pursuant to the Sale Call Option or the Put Option, which would require approval of the SMCCCD Board. This Agreement has been duly executed and delivered by SMCCCD. This Agreement constitutes the legal, valid and binding obligation of SMCCCD, enforceable against SMCCCD in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity.

d. Absence of Conflicting Agreements and Required Consents. The execution, delivery and performance by SMCCCD of this Agreement (i) does not require the consent of any third party (except for the consent of the FCC for a Sale); (ii) will not conflict with any provision of the laws governing SMCCCD; (iii) will not conflict with, result in a breach of, or constitute a default under, any applicable law, judgment, order, rule or regulation of any court or governmental unit by which SMCCCD may be bound, provided that FCC consent for a Sale has been obtained; and (iv) will not conflict with, constitute grounds for termination of, result in a breach of, or constitute a default under, any agreement, instrument, license or permit to which SMCCCD is a party or by which SMCCCD may be bound. Without in any way limiting the foregoing, SMCCCD warrants that it has complied with any requirements of California and local law with which a community college district must comply to sell a broadcast property SMCCCD will defend itself and LPN against any charge of noncompliance by SMCCCD with such requirements and, in the event of a final decision by a competent authority that SMCCCD has failed to comply with such requirements, will take all reasonable steps to come into compliance with such requirements.

e. No Interference. There is currently no legal or regulatory proceeding, including interventions by the public or any Government Authority pending, or to the knowledge of SMCCCD threatened, that could reasonably be expected to materially frustrate, impair or limit the consummation of any of the transactions contemplated by or under the Funding Documents (including the participation by SMCCCD in, or the assignment of the FCC Licenses or surrender of the spectrum usage rights associated with the FCC Licenses pursuant to, the Auction, a Call Option Sale or Put Option Sale) or otherwise to have a Material Adverse Effect (as defined in the Funding Agreement).

9. Representations and Warranties of LPN. As an inducement to SMCCCD to enter into this Agreement, LPN makes the following representations and warranties to SMCCCD, each of which is true and correct on the date hereof:

a. Funding Agreement Representations and Warranties. The representations and warranties of LPN contained in Section 5 of the Funding Agreement are incorporated herein by reference as if the same were set forth fully herein

b. Organization, Standing and Authority. LPN is a limited liability corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, with all requisite power under its organization documents to enter into and perform this Agreement and the transactions contemplated hereby.

c. Authorization and Binding Obligation. The execution, delivery, and performance by LPN of this Agreement, and the consummation by LPN of the transactions contemplated hereby, have been duly authorized by all necessary corporate action. This Agreement has been duly executed and delivered by LPN. This Agreement constitutes the legal, valid, and binding obligation of LPN, enforceable against LPN in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting the rights of creditors generally or by general principles of equity.

d. Absence of Conflicting Agreements. The execution, delivery, and performance by LPN of this Agreement (with or without the giving of notice, the lapse of time, or both) (i) do not require the consent of any third party (other than the consent of the FCC for a sale); (ii) will not conflict with, result in a breach of, or constitute a default under, any applicable law, judgment, order, rule or regulation of any court or governmental unit to which LPN is a party or by which LPN is bound, provided that FCC consent for a Sale has been obtained; and (iii) will not conflict with, constitute grounds for termination of, result in a breach of, constitute a default under, or accelerate or permit the acceleration of any performance required by, the terms of, any agreement, instrument, license, or permit to which LPN is a party or by which LPN may be bound.

10. Covenants.

a. The covenants of SMCCCD contained in Section 6 and Section 7 of the Funding Agreement are incorporated herein by reference as if the same were set forth fully herein.

b. SMCCCD covenants that the Station will participate in the Auction and SMCCCD and LPN both covenant that they will perform their respective obligations under the Funding Documents.

c. From the date of this Agreement until the earlier to occur of an Auction Sale, Call Option Sale or Put Option Sale, SMCCCD will:

i. maintain, and take all actions necessary to maintain, the FCC Licenses in full force and effect and in good standing in accordance with their terms and in compliance in all material respects with the Communications Act of 1934, as amended, and the FCC Rules, including but not limited to the timely filing and prosecuting of any necessary modification or renewal applications of the FCC Licenses or other submissions to the FCC.

ii. operate the Station, and perform all of its obligations with respect thereto, in the ordinary course of business consistent with past practices, and maintain full and complete control over the Station's personnel, programming and finances.

iii. not solicit, initiate or hold discussions with any other party with respect to any transaction similar to the transactions contemplated by this Agreement involving the FCC Licenses or the Station or with respect to any sale of the Station, except as permitted in the Funding Documents.

d. From the date of this Agreement until the earlier to occur of an Auction Sale, Call Option Sale or Put Option Sale, each party covenants that it will take no action that could reasonably be expected to impede, interfere with, delay, postpone or materially adversely affect the transactions contemplated by this Agreement or the likelihood of such transactions being consummated.

11. Specific Performance. The parties acknowledge that the Options granted in this Agreement are unique and not readily obtainable on the open market and that, in the event that either party fails to perform its obligations pursuant to this Agreement, money damages alone will be inadequate to compensate the damaged party for its injury. The parties agree that in the event of a material breach by a party, the non-breaching party shall be entitled, in lieu of terminating this Agreement, to specific performance of its terms. If any action is brought by one party against the other to enforce this Agreement, the other party shall waive the defense that there is an adequate remedy at law, and the prevailing party in litigation shall be entitled to receive from the non-prevailing party all court costs and reasonable attorney's fees incurred by the prevailing party in enforcing or defending its rights under this provision.

12. Indemnification.

a. Indemnification by SMCCCD. SMCCCD shall defend and save LPN and its respective officers, directors, employees, agents, representatives and permitted assigns (each, an "LPN Indemnified Party"), forever harmless from and against, and shall reimburse each LPN Indemnified Party for, any and all liabilities, obligations, deficiencies, demands, claims, suits, actions, or causes of action, assessments, losses, costs and expenses (including reasonable attorneys' fees) ("Losses"), sustained or incurred by an LPN Indemnified Party, relating to, resulting from, arising out of, or otherwise by virtue of, any of the following:

i. any breach of a representation or warranty made by SMCCCD in Section 8 of this Agreement; and

ii. any breach of a covenant or other agreement made by in this Agreement.

b. Indemnification by LPN. LPN shall defend and save SMCCCD and its respective officers, directors, employees, agents, representatives and permitted assigns (each, an "SMCCCD Indemnified Party"), forever harmless from and against, and shall reimburse each SMCCCD Indemnified Party for, any and all Losses sustained or incurred by an SMCCCD Indemnified Party, relating to, resulting from, arising out of, or otherwise by virtue of, any of the following:

i. any material breach of a representation or warranty made by LPN in Section 9 of this Agreement; and

ii. any material breach of a covenant or other agreement made by LPN in this Agreement.

13. Dispute Resolution. Any disputes between LPN and SMCCCD arising out of or relating to this Agreement shall be subject, *mutatis mutandis*, to the dispute resolution provisions set forth in the Funding Agreement.

14. Modification. This Agreement shall not be amended, modified or waived in whole or in part except in writing signed by an officer of the party to be bound by such amendment, modification or waiver.

15. Waiver of Breach. A waiver by one party of any breach or default by the other party shall not be construed as a waiver of any other breach or default whether or not similar and whether or not occurring before or after the subject breach.

16. Notices. All notices and other communications required or ~~permitted~~ hereunder shall be in writing, shall be deemed duly given upon actual receipt, and shall be delivered (a) in person, (b) by a generally recognized overnight courier service which provides written acknowledgment by the addressee of receipt, or (c) by email or other generally accepted means of electronic transmission, with affirmative evidence of receipt, addressed as set forth in Exhibit A or to such other addresses as may be specified by like notice to the other parties and acknowledged as received by such addressee(s).

17. Assignments. LPN may assign its rights hereunder and delegate its duties hereunder, in whole or in part, to one or more affiliates. As used herein, an "affiliate" of a person means any person that directly or indirectly controls, is controlled by, or is under common control with the person in question. However, in that event LPN will remain responsible for performance. Any such assignment or delegation authorized pursuant to this Section 17 shall be pursuant to a written agreement, which shall be delivered to SMCCCD. Except as otherwise expressly provided herein, neither this Agreement nor any rights, duties or obligations hereunder may be assigned or delegated by any of the parties, in whole or in part, whether voluntarily, by operation of law or otherwise. Any attempted assignment or delegation in violation of this prohibition shall be null and void. Subject to the foregoing, all of the terms and provisions hereof shall be binding upon, and inure to the benefit of, the successors and permitted assigns of the parties. Nothing contained herein, express or implied, is intended to confer on any person other than the parties or their respective successors and permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

18. Effect of Default. Notwithstanding anything to the contrary in this Agreement, a party may not exercise any Option or other right under this Agreement if such party is in material default under this Agreement or any other Funding Document.

19. Governing Law. This Agreement and the legal relations among the parties shall be governed by and construed in accordance with the laws of the State of California applicable to contracts between California residents made and performed in that State, without regard to conflict of laws principles.

20. Further Assurances. In a timely fashion, each party shall execute and deliver such further instruments, documents or assurances, and take such further action, as shall be required to carry out the purposes and intent of this Agreement.

21. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original instrument and both of which, when taken together, shall constitute one and the same agreement, and any such counterpart may be delivered by facsimile or other electronic transmission (including .pdf file) with affirmative evidence of receipt..

22. Severability. If any provision of this Agreement, or the application thereof, shall for any reason or to any extent be invalid or unenforceable, then the remainder of this Agreement and application of such provision to other persons or circumstances shall continue in full force and effect and in no way be affected, impaired or invalidated; *provided*, that the aggregate of all such provisions found to be invalid or unenforceable does not materially affect the benefits and obligations of the parties of the Agreement taken as a whole. In the event of any such invalidity, the parties hereto agree that (a) such invalidity shall be as minimal as possible so as to make such provision(s) valid and enforceable and (b) they shall attempt in good faith to replace any such invalid provisions with a valid and enforceable provision that effects as ~~nearly~~ as possible the original intent of the parties hereto.

23. Headings. The subject headings of the sections and sub-sections of this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of the terms and conditions of this Agreement.

24. Conflicts. In the event of any conflict or inconsistency between this Agreement and the Funding Agreement, the terms of the Funding Agreement shall control. ___

25. Public Disclosure. To the maximum extent permitted by law, SMCCCD will provide LPN with notice of any intended public disclosure of this Agreement or any other Funding Document and provide LPN with the opportunity to consult with SMCCCD and redact such agreements to the extent permitted by law prior to their public disclosure.

[Signatures page follows]

IN WITNESS WHEREOF, the parties have caused this Put/Call Option Agreement to be signed by their duly authorized representatives as of the date first set forth above.

LOCUSPOINT NETWORKS LLC

By: William de la Torre
Its: CEO

SAN MATEO COUNTY COMMUNITY
COLLEGE DISTRICT

By: [Signature]
Its: Executive Vice Chancellor

EXHIBIT A

NOTICES

If to SMCCCD:

Executive Vice Chancellor
San Mateo County Community College District
3401 CSM Drive
San Mateo, CA 94402
Phone: 650-358-6790
Email: roecksj@smccd.edu

With a copy to:

Lawrence M. Miller
Schwartz, Woods & Miller
1233 20th Street, NW, Suite 610
Washington, D.C. 20036-7322
Phone: (202) 833-1700
Email: miller@swmlaw.com

With a copy to:

Jan Roecks
San Mateo County Community College District
3401 CSM Drive
San Mateo, CA 94402
Phone: 650-358-6790
Email: roecksj@smccd.edu

Eugene Whitlock
400 County Center, 6th Floor
Redwood City, CA 94063

If to LPN:

LocusPoint Networks, LLC
Pleasanton Corporate Commons
6200 Stoneridge Mall Road, Suite 300
Pleasanton, CA 94588
Attn: William deKay
Facsimile No.: (925) 399-6001
Email: bill@locuspointnetworks.com

With a copy to:

O'Melveny & Myers LLP
2765 Sand Hill Road
Menlo Park, California 94025
Attn: David Makarechian, Esq.
Facsimile No.: (650) 473-2601
Email: dmakarechian@omm.com

AMENDMENT TO PUT/CALL OPTION AGREEMENT

This Amendment ("Amendment") is entered into on December 17, 2015 ("Amendment Effective Date") by San Mateo County Community College District ("SMCCCD"), a community college district of the State of California, and LocusPoint Networks, LLC ("LPN"), a Delaware limited liability company, to amend the Put/Call Option Agreement between the District and LPN, dated as of May 16, 2013 ("Agreement"). Capitalized terms that are used but not defined herein shall have the meaning given to such terms in the Agreement.

WHEREAS, pursuant to the Agreement, SMCCCD, among other matters, granted to LPN under certain conditions stated in the Agreement, the Sale Call Option pursuant to which LPN may cause SMCCCD to participate in the sale of station KCSM-TV (RF Channel 43), San Mateo, California (FCC Facility ID No. 58912) (the "Station"), including the Station's FCC License and all of the Station's other assets; and

WHEREAS, under Section 3(b) of the Agreement, the Sale Call Option is exercisable on the earlier to occur of the following: (i) the date that the SMCCCD withdraws from the Auction or is determined to be unqualified to bid, or if it neither withdraws or is determined to be unqualified, the date that the FCC provides notice of the results of the Auction and such notice does not indicate that the FCC has accepted SMCCCD's bid for relinquishment of the spectrum usage rights associated with the FCC Licenses; or (ii) the date on which a Triggering Event (as defined in Section 9.1 of the Funding Agreement) occurs, except for a Triggering Event under Sections 9.1E or 9.1F of the Funding Agreement; or (iii) thirty (30) days after the Subsidy Termination Date if the FCC has not by that date announced a date by which applications to participate in the Auction must be filed; and

WHEREAS, following the execution of the Agreement, the FCC issued a new regulation, 47 C.F.R. § 1.2205, and related guidance (collectively, "Rule") prohibiting certain communications from the deadline for submitting applications to participate in the reverse auction portion of the Auction until the results of the Auction are announced by public notice ("Quiet Period"), and as a result, LPN and SMCCCD may not communicate during the Quiet Period with respect to certain circumstances that could give rise to an exercise of the Sale Call Option; and

WHEREAS, to avoid any doubt as to the parties' compliance with the Rule, and pursuant to Section 14 (Modification) and Section 20 (Further Assurances) of the Agreement, the parties desire to amend the Agreement to modify the earliest date by which LPN may exercise the Sale Call Option to comply with the Rule.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the receipt and sufficiency of which the parties hereby acknowledge, the parties agree as follows:

1. Section 3(b) of the Agreement shall be amended as of the Amendment Effective to follows:
 - b. The Sale Call Option will be exercisable for a period (the "Sale Call Option Period") ending on the Option Termination Date and beginning on the earlier to

occur of the following (i) one day after the results of the Auction are announced by the FCC by public notice and such notice does not indicate that the FCC has accepted SMCCCD's bid for relinquishment of the spectrum usage rights associated with the FCC Licenses; or (ii) the date on which a Triggering Event (as defined in Section 9.1 of the Funding Agreement) occurs, except for a Triggering Event under Sections 9.1E or 9.1F of the Funding Agreement, but only if such Triggering Event occurs before the deadline for submitting applications to participate in the reverse auction portion of the Auction has passed, provided, however that once the deadline for submitting applications to participate in the reverse auction portion of the Auction has passed, the Sale Call Option may not then be exercised until one day after the results of the Auction are announced by the FCC by public notice if such notice does not indicate that the FCC has accepted SMCCCD's bid for relinquishment of the spectrum usage rights associated with the FCC Licenses; or (iii) thirty (30) days after the Subsidy Termination Date if the FCC has not by that date announced a date by which applications to participate in the Auction must be filed.

2. Entire Agreement; Counterparts. This Amendment and the Agreement which it amends constitutes the entire understanding between the Parties with regard to the subject matter hereof and supersedes any prior understandings respecting the subject matter hereof. This Amendment may be signed in any number of counterparts, each of which shall be an original for all purposes, but all which taken together shall constitute only one Amendment. The Parties agree that transmission of this Amendment with facsimile or electronic "pdf" signatures shall bind the Parties in the same manner as if the Party's original signatures had been delivered.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the date and year first above written.

SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT

By: Kathy Blackwood
Name: Kathy Blackwood
Title: Executive Vice Chancellor

LOCUSPOINT NETWORKS, LLC

By: [Signature]
Name:
Title:

EXHIBIT F

AGENDA
SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT
SPECIAL MEETING OF THE BOARD OF TRUSTEES
September 20, 2017, 6:00 p.m.
District Office Board Room, 3401 CSM Drive, San Mateo, CA 94402
Other Location: Av. Atlântica, 1500, Rio de Janeiro - RJ, 22021-000, Brazil

NOTICE ABOUT PUBLIC PARTICIPATION AT BOARD MEETINGS

The Board welcomes public discussion.

- *The public's comments on agenda items will be taken at the time the item is discussed by the Board.*
- *To comment on items not on the agenda, a member of the public may address the Board under "Statements from the Public on Non-Agenda Items;" at this time, there can be discussion on any matter related to the Colleges or the District, except for personnel items and potential or existing litigation. No more than 20 minutes will be allocated for this section of the agenda. No Board response will be made nor is Board action permitted on matters presented under this agenda topic.*
- *If a member of the public wishes to present a proposal to be included on a future Board agenda, arrangements should be made through the Chancellor's Office at least seven days in advance of the meeting. These matters will be heard under the agenda item "Presentations to the Board by Persons or Delegations." A member of the public may also write to the Board regarding District business; letters can be addressed to 3401 CSM Drive, San Mateo, CA 94402.*
- *Persons with disabilities who require auxiliary aids or services will be provided such aids with a three day notice. For further information, contact the Executive Assistant to the Board at (650) 358-6753.*
- *Regular Board meetings are tape recorded; tapes are kept for one month.*

Government Code §54957.5 states that public records relating to any item on the open session agenda for a regular board meeting should be made available for public inspection. Those records that are distributed less than 72 hours prior to the meeting are available for public inspection at the same time they are distributed to the members of the Board. The Board has designated the Chancellor's Office at 3401 CSM Drive for the purpose of making those public records available for later inspection; members of the public should call 650-358-6753 to arrange a time for such inspection.

6:00 p.m. Call to Order/Roll Call

Pledge of Allegiance

CONSIDERATION OF ITEM TABLED AT THE MEETING OF SEPTEMBER 13, 2017

17-9-104B Ratification of the Purchase Agreement for the Sale of KCSM-TV and Ancillary Agreements

ADJOURNMENT

BOARD REPORT 17-9-104B

TO: Members of the Board of Trustees

FROM: Ron Galatolo, Chancellor

PREPARED BY: Eugene Whitlock, Vice Chancellor, Human Resources and General Counsel,
(650) 358-6883

**RATIFICATION OF THE PURCHASE AGREEMENT FOR THE SALE OF KCSM-TV AND
ANCILLARY AGREEMENTS**

At a special meeting of the Board of Trustees on September 6, 2017, the Board voted ~~unanimously to~~ authorize the Chancellor to enter into an agreement consistent with the material terms of the agreement and to authorize the Board President to enter into an escrow agreement and any other ancillary agreements that are necessary to effectuate the sale of KCSM.

At that meeting, Eugene Whitlock, Vice Chancellor of Human Resources/General Counsel, stated the material terms that are under consideration, as follows:

With regard to station assets, assets that would be transferred include:

- FCC licenses
- Transmitter site equipment and master control equipment, to be sold "as is"
- Lease for Sutro Tower which would be fully transferred to the buyer
- All files and records of the Station required to be kept by the FCC, and all repacking records

The purchase price would be \$12 million cash at closing. Of that \$12 million, \$960,000 would be paid as a deposit at the time of the execution of the agreement, to be deposited with an agreed escrow agent subject to a separate escrow agreement.

Additional consideration, to be provided by the buyer, includes:

- Television and radio underwriting announcements for five years after closing
- Three student internships per semester, for three years after closing
- Carriage of KCSM(FM), for five years after closing
- Carriage of 30 minutes of District-produced programming once each month, for five years after closing

Closing is scheduled to take place within 10 days after FCC consent is final.

With regard to repacking, the District is obliged to continue repacking efforts as required by the FCC. At closing, the buyer promises to reimburse any unreimbursed costs the District has incurred in connection with repacking.

There are terms and conditions around termination. For example, if the deal does not close within 12 months from the date of the agreement, either party may terminate the agreement.

Upon approval by the Board, Vice Chancellor Whitlock said the District would work with KRCB to finalize the agreement and then bring it back to the Board for ratification. The agreement has now been finalized and is being presented to the Board for ratification.

RECOMMENDATION

It is recommended that the Board ratify the sale of KCSM-TV to KRCB-TV. Copies of the Asset Purchase Agreement and Escrow Instruction and Agreement are attached to this report.

ASSET PURCHASE AGREEMENT

This **ASSET PURCHASE AGREEMENT** (this "Agreement"), effective as of September __, 2017 (the "Effective Date"), is entered into between **SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT**, a California Community College District ("Seller"), and **RURAL CALIFORNIA BROADCASTING CORPORATION**, a California non-profit and nonstock corporation ("Buyer").

Recitals

A. Seller is the licensee of and operates noncommercial educational television Station KCSM-TV, San Mateo, California (the "Station"), pursuant to a license issued by the Federal Communications Commission (the "FCC").

B. Seller desires to sell and assign to Buyer, and Buyer wishes to buy and take assignment of, certain assets of Seller and the FCC Licenses as set forth herein on the terms and subject to the conditions hereinafter set forth, subject to the prior approval of the FCC.

In consideration of the foregoing and the mutual promises contained herein, Buyer and Seller, intending to be legally bound, hereby agree as follows:

Agreement

ARTICLE 1: PURCHASE OF ASSETS

1.1 Station Assets. On the terms and subject to the conditions hereof, at Closing (as defined in Section 1.8), Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase and acquire from Seller, all right, title and interest of Seller in and to the assets owned and held by Seller and described in this Section 1.1 (collectively, the "Station Assets"). The Station Assets consist of:

(a) all transferable FCC licenses, permits and other authorizations with respect to the Station (the "FCC Licenses"), which are listed on *Schedule 1.1(a)*, including any renewals or modifications thereof between the date hereof and Closing;

(b) the equipment, transmitters, and other tangible personal property that are used or held for use in the operation of the Station and listed on *Schedule 1.1(b)*, except for (i) any retirements or dispositions thereof made between the date hereof and Closing in the ordinary course of business in accordance with Section 4.1(c) hereof and (ii) the Rejected Personal Property (as defined in Section 2.6) (the "Tangible Personal Property");

(c) the contracts, agreements and leases that are used in the operation of the Station and listed on *Schedule 1.1(c)*, and all other such contracts, agreements and leases entered into between the date hereof and Closing subject to the limitations set forth in Section 4.1(f) (the "Station Contracts"); and

(d) all files, documents and records exclusively relating to the Station Assets or required by the FCC to be kept by the Station, including the Station's local public

files, engineering data and logs, Form 399 filed with the FCC specifying estimated expenses related to Repackaging (as defined in Section 1.6) and all Attachments thereto, together with all quotations, studies and correspondence relating to the KCSM repack plan, but excluding records included in or related to Excluded Assets (as defined in Section 1.2).

The Station Assets shall be transferred to Buyer free and clear of liens, claims and encumbrances (“Liens”), except for Assumed Obligations (defined in Section 1.3), liens that will be released at or prior to Closing, liens listed on *Schedule 1.1(c)* hereto, and such other liens, claims, restrictions, and other exceptions that do not in any material respect detract from the value of the property subject thereto or impair the use thereof in the ordinary course of the business of the Station (collectively, “Permitted Liens”).

1.2 Excluded Assets. Notwithstanding anything to the contrary contained in this Agreement and for the purposes of clarity, the Parties agree that the Station Assets shall not include the following assets or any rights, title and interest therein (the “Excluded Assets”):

(a) all cash and cash equivalents, including without limitation certificates of deposit, commercial paper, treasury bills, marketable securities, money market accounts and all such similar accounts or investments;

(b) all tangible and intangible personal property retired or disposed of between the date of this Agreement and Closing in accordance with Article 4;

(c) all Seller business records, including, without limitation, financial records, charter documents, and books and records relating to the organization and existence of Seller, duplicate copies of the records of the Station, and all records not relating to the operation of the Station;

(d) all contracts of insurance, all coverages and proceeds thereunder and all rights in connection therewith, including without limitation rights arising from any refunds due with respect to insurance premium payments to the extent related to such insurance policies;

(e) all pension, profit sharing plans and trusts and the assets thereof and any other employee benefit plan or arrangement and the assets thereof, if any;

(f) all receivables (if any) and any other rights to receipt of cash that accrue or have accrued prior to the Effective Time (as defined in Section 1.6) or otherwise arising during or attributable to any period prior to the Effective Time (the “Receivables”);

(g) all rights and claims, whether mature, contingent or otherwise, against third parties with respect to the Station and the Station Assets, to the extent arising during or attributable to any period prior to the Effective Time (as defined in Section 1.6);

(h) all deposits and prepaid expenses (and rights arising therefrom or related thereto), except to the extent Seller receives a credit therefor under Section 1.6 (Prorations and Adjustments);

(i) all rights and claims, whether mature, contingent or otherwise, primarily related to the Retained Obligations (as defined in Section 1.3);

(j) all assets used or held for use in the operation of any other radio or television station (other than the Station) owned or operated by Seller or an affiliate of Seller, or shared between any such station and the Station, except for the items specifically set forth on *Schedule 1.1(b)*;

(k) all intellectual property associated with the Station, including trademarks, trade names, service marks, internet domain names and websites, copyrights, slogans, or logos, including without limitation all intellectual property using or related to the call signs "KCSM" or "KCSM-TV", or any variation thereof, together with Seller's programming information and studies, marketing and demographic data, viewership studies and correspondence; and

(l) the items listed in *Schedule 1.2(l)* hereto.

1.3 Assumption of Obligations. On the Closing Date (as defined in Section 1.8), Buyer shall assume the (i) obligations of Seller arising during, or attributable to, any period of time on or after the Closing Date under the Station Contracts, (ii) all obligations and liabilities arising out of Buyer's ownership of the Station Assets, and (iii) any other liabilities of Seller to the extent Buyer receives a credit therefor under Section 1.6 (Prorations and Adjustments) (collectively, the "Assumed Obligations"). Except for the Assumed Obligations, Buyer does not assume, and will not be deemed by the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby to have assumed, any other liabilities or obligations of Seller (the "Retained Obligations").

1.4 Purchase Price. In consideration for the sale of the Station Assets to Buyer, at Closing Buyer shall pay Seller, by wire transfer of immediately available funds, the sum of Twelve Million Dollars (\$12,000,000.00) (including the Deposit (as defined in Section 1.5), subject to any adjustment pursuant to Section 1.6 (Prorations and Adjustments) (the "Purchase Price").

1.5 Deposit. On the date of this Agreement, Buyer shall make a cash deposit in immediately available funds in an amount equal to Nine Hundred and Sixty Thousand Dollars (\$960,000.00) (the "Deposit") with McGovern Escrow Services, Inc. (the "Escrow Agent") pursuant to the Escrow Agreement (the "Escrow Agreement") of even date herewith among Buyer, Seller and the Escrow Agent. At Closing, the Deposit shall be disbursed to Seller and applied to the Purchase Price and any interest accrued thereon shall be disbursed to Buyer. If this Agreement is terminated by Seller pursuant to Section 10.1(c), the Deposit and any interest accrued thereon shall be disbursed to Seller pursuant to Section 10.4 (Liquidated Damages). If this Agreement is terminated pursuant any other provision, the Deposit and any interest accrued thereon shall be disbursed to Buyer. The parties shall each cooperate to instruct the Escrow Agent to disburse the Deposit and all interest thereon to the party entitled thereto and shall not, by any act or omission, delay or prevent any such disbursement unless contested by a party in good faith in writing within five (5) business days of a disbursement request, in which event the Deposit shall remain with the Escrow Agent until the parties' dispute is resolved. Any failure by Buyer to make the Deposit on the date hereof constitutes a material default as to which the Cure

Period under Section 10.2 (Cure Period) shall not apply and shall entitle Seller to immediately terminate this Agreement.

1.6 Prorations and Adjustments. All prepaid and deferred income and expenses relating to the Station Assets and arising from the operation of the Station shall be prorated between Buyer and Seller in accordance with generally accepted accounting principles (“GAAP”) as of 12:01 a.m. on the day of Closing (the “Effective Time”). Such prorations shall include without limitation all taxes (except transfer taxes as provided by Section 11.1 (Expenses), music and other license fees, FCC regulatory fees, utility expenses, rent and other amounts under Station Contracts, and similar prepaid and deferred items. Seller shall receive a credit for all of the Station’s deposits and prepaid expenses to the extent they inure to Buyer’s benefit. Except as set forth in *Schedule 1.6*, Buyer will reimburse Seller for any expenses related to the Station’s involuntary channel reassignment in connection with reorganization of the television broadcast band pursuant to Section 6403(b) of the Middle Class Tax Relief and Job Creation Act of 2012 (“Repacking”) incurred by Seller but not reimbursed to Seller from the United States Treasury’s Repacking reimbursement fund as of the Effective Time, subject to Seller’s remittance to Buyer of any subsequent reimbursements received by Seller. To the extent possible, initial prorations and adjustments shall be made on the Closing Date, with final prorations and adjustments made no later than ninety (90) calendar days after Closing.

1.7 Additional Consideration. In further consideration for the sale of the Station Assets to Buyer, in addition to the Purchase Price, Buyer shall provide to Seller the additional consideration as set forth in *Schedule 1.7*.

1.8 Closing. The consummation of the sale and purchase of the Station Assets provided for in this Agreement (the “Closing”) shall take place on or before the tenth (10th) business day after the date on which the FCC Consent (as defined in Section 1.9) becomes a Final Order (as defined in Section 7.3) or on such other day after such FCC Consent as Buyer and Seller may mutually agree, subject to the satisfaction or waiver of the conditions set forth in Article 6 and Article 7. The date on which the Closing is to occur is referred to herein as the “Closing Date.”

1.9 FCC Consent. Within ten (10) business days after the date of this Agreement, Buyer and Seller shall file an application with the FCC (the “FCC Application”) requesting FCC consent to the assignment of the FCC Licenses to Buyer. FCC consent to the FCC Application without any material adverse conditions other than those of general applicability is referred to herein as the “FCC Consent”. Buyer and Seller shall diligently prosecute the FCC Application and otherwise use their commercially reasonable efforts to obtain the FCC Consent as soon as possible. Buyer and Seller shall notify each other of all documents filed with or received from any governmental agency with respect to this Agreement or the transactions contemplated hereby. Buyer and Seller shall furnish each other with such information and assistance as the other may reasonably request in connection with their preparation of any governmental filing hereunder. Except as otherwise provided herein, each party will be solely responsible for the expenses incurred by it in the preparation, filing, and prosecution of its respective portion of the FCC Application. Neither Buyer nor Seller shall take any intentional action that would, or intentionally fail to take such action the failure of which to take would, reasonably be expected to have the effect of materially delaying the issuance of the FCC Consent.

1.10 Repacking. Buyer acknowledges that it has reviewed Seller's plans, including equipment specifications, related to Repacking (as defined in Section 1.6). Seller agrees to give Buyer advance notice (which may be by email) of any material changes to the equipment specifications and vendors and to consider Buyer's recommendations regarding Repacking equipment specifications. For clarity, Seller has no obligation to Buyer with respect to Repacking, including without limitation any obligation to accept Buyer's recommendations regarding equipment specifications, except as expressly set forth in this Agreement.

ARTICLE 2: SELLER REPRESENTATIONS AND WARRANTIES

Seller makes the following representations and warranties to Buyer:

2.1 Organization. Seller is a California Community College District duly organized, validly existing and in good standing under the laws of the State of California. Seller has all requisite power and authority (i) to own, lease and use its assets as presently owned, leased and used, (ii) for the conduct the business and operations of Seller as presently conducted, (iii) to execute and deliver this Agreement, and (iv) to perform and comply with all of the terms, covenants, and conditions to be performed and complied with by Seller hereunder.

2.2 Authorization. The execution, delivery and performance of this Agreement by Seller have been duly authorized and approved by all necessary action of Seller and do not require any further authorization or consent of Seller. This Agreement is a legal, valid and binding agreement of Seller enforceable in accordance with its terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

2.3 No Conflicts. Except for the FCC Consent and consents to assign certain of the Station Contracts, and except as otherwise as set forth on *Schedule 2.10*, the execution, delivery and performance by Seller of this Agreement and the consummation by Seller of the transactions contemplated hereby do not conflict with any organizational documents of Seller or any other material contract to which Seller is bound, or any law, judgment, order, or decree to which Seller is subject, or require the consent or approval of, or a filing by Seller with, any governmental or regulatory authority.

2.4 FCC Licenses. Seller is the holder of the FCC Licenses described on *Schedule 1.1(a)*, which are all of the governmental licenses, permits and authorizations required for the present operation of the Station. The FCC Licenses are in full force and effect and have not been revoked, suspended, canceled, rescinded or terminated and have not expired. Except with respect to Repacking as set forth in *Schedule 1.1(a)*, there is no pending, or, to Seller's knowledge threatened, action by or before the FCC to revoke, suspend, cancel, rescind or materially adversely modify any of the FCC Licenses (other than proceedings to amend FCC rules and regulations of general applicability). There is not issued or outstanding, by or before the FCC, any order to show cause, notice of violation, notice of apparent liability, or order of forfeiture against the Station or against Seller with respect to the Station that could result in any such action. The Station is operating in compliance in all material respects with the FCC Licenses, the Communications Act of 1934, as amended (the "Communications Act"), and the

rules, regulations and policies of the FCC, other than such non-compliance as would not have a material adverse effect on Buyer, the Station Assets or the transactions contemplated by this Agreement. All material reports and filings required to be filed with the FCC by Seller with respect to the Station have been timely filed and all such reports and filings are accurate and complete, other than as would not have a material adverse effect on Buyer, the Station Assets or the transactions contemplated by this Agreement.

2.5 Taxes. Seller is not subject to taxation other than with respect to employment and sales and use taxes. It has timely filed all required tax returns in the manner prescribed by law, and all such tax returns are true, correct and complete in all material respects. Seller has properly accrued or paid to the extent such taxes have become due all taxes due from Seller. Seller has properly withheld all taxes as required. There are no liens for taxes upon the Station Assets. There is no dispute or claim concerning any tax liability relating to Seller either claimed or raised by any taxing authority. There are no pending tax audits or proposed tax audits of which Seller has notice.

2.6 Personal Property. *Schedule 1.1(b)* contains a list of all material items of Tangible Personal Property included in the Station Assets. Except as described in *Schedule 1.1(b)*, Seller has good title to or a valid leasehold or license interest in such Tangible Personal Property free and clear of Liens other than Permitted Liens. Subject to the foregoing, each item of Tangible Personal Property is sold "as is" as of the Effective Date. Buyer shall give notice to Seller within forty (40) days after the date on which the FCC Application is filed of any items listed on *Schedule 1.1(b)* (other than the Sutro Equipment) it does not wish to acquire at closing, and *Schedule 1.1(b)* shall be deemed amended to exclude such items (such excluded items, the "Rejected Personal Property"), and Buyer shall thereafter have no rights with respect to the Rejected Personal Property.

2.7 Contracts. *Schedule 1.1(c)* contains a list of all contracts that are included in the Station Contracts. The Station Contracts requiring the consent of a third party to assignment are identified on *Schedule 1.1(c)*. Each of the Station Contracts is in effect and is binding upon Seller and the other parties thereto (subject to bankruptcy, insolvency, reorganization or other similar laws relating to or affecting the enforcement of creditors' rights generally). Seller has performed its obligations under each of the Station Contracts in all material respects, and is not in material default thereunder, and no other party to any of the Station Contracts is in default thereunder in any material respect.

2.8 Insurance. All of the Tangible Personal Property is (a) self-insured against loss or damage up to a limit of \$150,000 in accordance with California law and Seller's established practice, and such insurance will be maintained in effect by Seller until the Closing, and (b) insured with a commercial insurance company for loss or damage in excess of the self-insurance amount up to \$5,000,000.

2.9 Compliance with Law. Other than such non-compliance as would not have a material adverse effect on a reasonable buyer, the Station Assets or the transactions contemplated by this Agreement, Seller has complied with all laws, rules and regulations, including without limitation all FCC rules and regulations applicable to the operation of the Station, and all decrees and orders of any court or governmental authority which are applicable to the operation of the Station. To Seller's knowledge, there are no claims or investigations by

the government pending or threatened against Seller in respect of the Station except those affecting the industry generally.

2.10 Litigation. Except as set forth on *Schedule 2.10*, there is no action, suit or proceeding pending or, to Seller's knowledge, threatened against Seller in respect to the Station Assets that will or threatens to subject Buyer to liability or which will or threatens to affect Seller's ability to perform its obligations under this Agreement. Seller is not operating under or subject to any order, writ, injunction or decree relating to the Station Assets of any court or governmental authority which would have a material adverse effect on the condition of the Station Assets or on the ability of Seller to enter into this Agreement or consummate the transactions contemplated hereby, other than those of general applicability (e.g., Repacking).

2.11 Disclaimer of Other Express and Implied Representations and Warranties. Except for the representations and warranties expressly made by Seller in this Article 2, Seller makes no other representations or warranties, express or implied, whether statutory or by common law regarding Seller, the business and operation of the Station, or the Station Assets.

2.12 No Other Representations or Warranties. Seller agrees that neither Buyer nor any of its representatives has made and shall not be deemed to have made, nor has Seller or any of its representatives relied on, any representation, warranty, covenant or agreement, express or implied, or any statement or information, with respect to Buyer, its business, or its proposed acquisition and operation of the Station, other than those representations, warranties, covenants and agreements explicitly set forth in Article 3. Seller further acknowledges and agrees that (a) it has made its own investigation into, and based thereon has formed an independent judgment concerning the Buyer, its business and the proposed acquisition and operation of the Station, and (b) Buyer has made available such information about Buyer as Seller has reasonably requested.

ARTICLE 3: BUYER REPRESENTATIONS AND WARRANTIES

Buyer hereby makes the following representations and warranties to Seller:

3.1 Organization. Buyer is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, and is, or will be at Closing, qualified to do business in the state of California. Buyer has the requisite power and authority to execute, deliver and perform this Agreement and all of the other agreements and instruments to be executed and delivered by Buyer pursuant hereto and to consummate the transactions contemplated hereby.

3.2 Authorization. The execution, delivery and performance of this Agreement by Buyer has been duly authorized and approved by all necessary action of Buyer and do not require any further authorization or consent of Buyer. This Agreement is a legal, valid and binding agreement of Buyer enforceable in accordance with its terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

3.3 No Conflicts. Except for the FCC Consent, the execution, delivery and performance by Buyer of this Agreement and the consummation by Buyer of any of the transactions contemplated hereby do not conflict with any organizational documents of Buyer, any contract or agreement to which Buyer is a party or is by which it is bound, or any law, judgment, order or decree to which Buyer is subject, or require the consent or approval of, or a filing by Buyer with, any governmental or regulatory authority or any third party.

3.4 Litigation. There is no action, suit or proceeding pending or, to Buyer's knowledge, threatened against Buyer which questions the legality or propriety of the transactions contemplated by this Agreement or could materially adversely affect the ability of Buyer to perform its obligations hereunder.

3.5 Qualification. Buyer is legally, financially and otherwise qualified to be the licensee of, acquire, own and operate the Station under the Communications Act and the rules, regulations and policies of the FCC, including, but not limited to, eligibility to hold a noncommercial educational license under Section 73.621 of those rules. There are no facts that would, under existing law and the existing rules, regulations, policies and procedures of the FCC, disqualify Buyer as an assignee of the FCC Licenses or as the owner and operator of the Station, or that that would reasonably be expected to delay the FCC's processing of the FCC Application because of Buyer's qualifications. No divestiture, waiver of or exemption from any existing FCC rule or policy on the part of Buyer is necessary for the FCC Consent to be obtained.

3.6 Financing. Buyer has on hand or from committed funds financial resources sufficient to consummate the transactions contemplated by this Agreement and to operate the Station after the Closing Date. Buyer's obligations hereunder are not subject to or conditioned upon it obtaining financing or a financing commitment of any nature.

3.7 No Other Representations or Warranties. Buyer agrees that neither Seller nor any of its representatives has made and shall not be deemed to have made, nor has Buyer or any of its representatives relied on, any representation, warranty, covenant or agreement, express or implied, or any statement or information, with respect to Seller, its business, the Station, or the Station Assets, other than those representations, warranties, covenants and agreements explicitly set forth in Article 2. Buyer further acknowledges and agrees that (a) it has made its own investigation into, and based thereon has formed an independent judgment concerning the Station and the Station Assets, and (b) Seller has made available such information about the Station and the Station Assets as Buyer has reasonably requested.

ARTICLE 4: SELLER AND BUYER COVENANTS

4.1 Seller's Covenants. Between the date hereof and Closing, except as permitted by this Agreement or with the prior written consent of Buyer, which shall not be unreasonably withheld, delayed or conditioned, Seller shall:

- (a) use commercially reasonable efforts to operate the Station in the ordinary course of business (for avoidance of doubt, any expense reductions made consistent with Seller's past practices shall be deemed in the ordinary course of business) and in all material respects in accordance with FCC rules and regulations and with all other applicable laws, regulations, rules and orders;

(b) except with respect to Repacking as set forth in *Schedule 1.1(a)* and Section 4.1(h), not modify, and in all material respects maintain in full force and effect, the FCC Licenses;

(c) except in the ordinary course of business, not sell, lease or dispose of or agree to sell, lease or dispose of any of the Station Assets unless replaced with similar items of substantially equal or greater value and utility, or create, assume or permit to exist any Liens upon the Station Assets, except for Permitted Liens, and not dissolve, liquidate, merge or consolidate with any other entity;

(d) use commercially reasonable efforts to maintain the Tangible Personal Property in the ordinary course of business;

(e) upon reasonable notice, give Buyer and its representatives reasonable access during normal business hours to the Station Assets, and furnish Buyer with information relating to the Station Assets that Buyer may reasonably request, provided that such access rights shall not be exercised in a manner that interferes with the operation of the Station;

(f) not enter into new Station Contracts that will be binding upon Buyer after Closing or amend or terminate any existing Station Contracts, except for Station Contracts made, amended or terminated with Buyer's prior written consent;

(g) cooperate with Buyer in timely filing such applications and other material as may be required to obtain FCC Consent to the assignment of the FCC Licenses to Buyer, including, but not limited to, providing the FCC with such information as it may reasonably request, assisting Buyer in providing such information, where appropriate, and generally using commercially reasonable efforts to obtain the prompt and timely FCC Consent; and

(h) take such commercially reasonable steps as are required by the Mt. Sutro transmitter site landlord and, in consultation with Buyer as provided by Section 1.10 (Repacking), such other steps as Seller reasonably deems necessary and appropriate, in each case to enable the Station to meet the Repacking requirements and schedule established by the FCC.

4.2 Buyer's Covenants. Between the date hereof and Closing, except as permitted by this Agreement or with the prior written consent of Seller, which shall not be unreasonably withheld, delayed or conditioned, Buyer shall:

(a) take no action that would reasonably be expected to impair its qualifications to be the licensee of the Station, materially delay obtaining the FCC Consent, result in its disqualification under the rules of the FCC to be the licensee of the Station, or that would require it to obtain a waiver of the FCC Rules in order to obtain the FCC Consent;

(b) cooperate with Seller in timely filing such applications and other material as may be required to obtain FCC Consent to the assignment of the FCC Licenses to Buyer, including, but not limited to, providing the FCC with such information as it may reasonably request, assisting Seller in providing such information, where appropriate, and

generally using commercially reasonable efforts to obtain the prompt and timely FCC Consent; and

(c) after joining in the filing of the application for FCC Consent, apply promptly to the FCC for a change in the Station call sign to take effect upon Closing so as to avoid confusion with Seller's continuing operation of Station KCSM (FM), San Mateo, California.

ARTICLE 5: JOINT COVENANTS

Buyer and Seller hereby covenant and agree as follows:

5.1 Control. Buyer shall not, directly or indirectly, control, supervise or direct the operation of the Station prior to Closing. Consistent with the Communications Act and the FCC rules and regulations, control, supervision and direction of the operation of the Station prior to Closing shall remain the responsibility of Seller as the holder of the FCC Licenses.

5.2 Risk of Loss. Seller shall bear the risk of any loss of or damage to the Tangible Personal Property located at the Mt. Sutro transmitter site and necessary for the operation of the Station as it is operated as of the Effective Date (the "Sutro Equipment") at all times until the Closing, and Buyer shall bear the risk of any such loss or damage thereafter. In the event that any loss of or material damage to the Sutro Equipment occurs after the Effective Date but prior to Closing, then upon becoming aware of such loss or material damage, Seller shall use commercially reasonable efforts to promptly notify Buyer in writing, and it shall be the responsibility of Seller, prior to Closing, to repair or cause to be repaired or replaced, and to restore, the affected Sutro Equipment substantially to its condition prior to any such loss, damage or destruction; provided, that in the event that any Sutro Equipment is not repaired, replaced, or restored prior to Closing, Buyer, at its sole option, upon written notice to Seller: (a) may elect to postpone the Closing until the earlier of (A) such time as the property has been repaired, replaced, or restored in all material respects, or (B) up to six (6) months from the date when all other conditions to Closing herein have been satisfied (other than those conditions that by their nature are to be satisfied at Closing, but subject to the satisfaction of those conditions at such time); or (b) may at any time during such six (6) month period elect to consummate the Closing and accept the property in its then condition, in which event the Purchase Price shall be reduced by the estimated cost of such repair, replacement or restoration of the Sutro Equipment as determined by an independent third-party engineer agreeable to both Parties, which engineer Seller and Buyer shall instruct to base the estimate on the least expensive approach that complies with good engineering practices, considering the timeframe of Repacking. If Buyer shall extend the time for Closing pursuant to clause (a) above, the provisions of Section 10.1(d) shall be tolled for such time as Buyer has elected to postpone the Closing pursuant to this Section 5.2 and Seller is using reasonable best efforts to effect such repair, replacement or restoration, and for five (5) business days after the property involved has been repaired, replaced or restored in all material respects.

5.3 Consents.

(a) The parties shall use commercially reasonable efforts to obtain any third party consents necessary for the assignment of any Station Contract (which commercially

reasonable efforts shall not require any payment to any such third party), but no such consents shall be conditions to Closing except for the Required Consents. Receipt of consents designated with a diamond on *Schedule 1.1(c)* shall be a condition precedent to Buyer's obligation to close under this Agreement (the "Required Consents").

(b) To the extent that any Station Contract may not be assigned without the consent of any third party, and such consent is not obtained prior to Closing, this Agreement and any assignment executed pursuant to this Agreement shall not constitute an assignment of such Station Contract; provided, however, with respect to each such Station Contract, Seller and Buyer shall cooperate to the extent feasible in effecting a lawful and commercially reasonable arrangement under which Buyer shall receive the benefits under the Station Contract from and after Closing, and to the extent of the benefits received, Buyer shall pay and perform Seller's obligations arising under the Station Contract from and after Closing in accordance with its terms. This subparagraph 5.3(b) shall not apply to the Required Consents.

5.4 FCC Qualification. Neither Buyer nor any person with an attributable interest in Buyer shall file any application to acquire any station or otherwise operate any station if, as a result, such action would cause Buyer, or any person with an attributable interest in Buyer, to have an attributable interest in, and/or seek to acquire an attributable interest in, any station(s) which would involve a greater number of stations than would be permitted, absent an exemption or waiver, under the Communications Act, or any of the rules, regulations or policies the FCC, including the FCC's multiple ownership rules, in effect from time to time, or which would raise market concentration questions under applicable law.

5.5 Actions. After Closing, if reasonably requested by Seller, Buyer shall cooperate with Seller in the investigation, defense or prosecution of any action that is pending or threatened against Seller or its affiliates with respect to the Station, whether or not such action is subject to a claim for indemnification pursuant to this Agreement; provided, however, that Seller shall reimburse Buyer for the out-of-pocket costs (including reasonable attorneys' fees), if any, reasonably incurred by Buyer to comply with this Section 5.5.

ARTICLE 6: SELLER CLOSING CONDITIONS

The obligation of Seller to consummate the Closing hereunder is subject to satisfaction, at or prior to Closing, of each of the following conditions (unless waived in writing by Seller):

6.1 Representations and Covenants.

(a) The representations and warranties of Buyer 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.

(b) The covenants and agreements to be complied with and performed by Buyer at or prior to Closing shall have been complied with and performed in all material respects.

(c) Seller shall have received a certificate dated as of the Closing Date from Buyer executed by an authorized officer of Buyer to the effect that the conditions set forth in Sections 6.1(a) and (b) have been satisfied.

6.2 Proceedings. Neither Seller nor Buyer shall be subject to any court or governmental order or injunction restraining or prohibiting the consummation of the transactions contemplated hereby.

6.3 FCC Authorization. The FCC Consent shall have been obtained.

6.4 Deliveries. Buyer shall have complied with its obligations set forth in Section 8.2 (Buyer Documents).

ARTICLE 7: BUYER CLOSING CONDITIONS

The obligation of Buyer to consummate the Closing hereunder is subject to satisfaction, at or prior to Closing, of each of the following conditions (unless waived in writing by Buyer):

7.1 Representations and Covenants.

(a) The representations and warranties of Seller 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.

(b) The covenants and agreements to be complied with and performed by Seller at or prior to Closing shall have been complied with and performed in all material respects.

(c) Buyer shall have received a certificate dated as of the Closing Date from Seller executed by an authorized official of Seller to the effect that the conditions set forth in Sections 7.1(a) and (b) have been satisfied.

7.2 Proceedings. Neither Seller nor Buyer shall be subject to any court or governmental order or injunction restraining or prohibiting the consummation of the transactions contemplated hereby.

7.3 FCC Authorization. The FCC Consent shall have been obtained and, unless waived by Buyer, the FCC Consent shall have become a Final Order. For purposes of this Agreement, the term "Final Order" shall mean that action shall have been taken by the FCC (including action duly taken by the FCC's staff, pursuant to delegated authority) which shall not have been reversed, stayed, enjoined, set aside, annulled or suspended; with respect to which no timely request for stay, petition for rehearing, appeal or certiorari or *sua sponte* action of the FCC with comparable effect shall be pending; and as to which the normal time for filing any such request, petition, appeal, certiorari or for the taking of any such *sua sponte* action by the FCC shall have expired or otherwise terminated.

7.4 Deliveries. Seller shall have complied with its obligations set forth in Section 8.1 (Seller Documents).

7.5 Consents. The Required Consent shall have been obtained, including but not limited to landlord consents for all studio and transmitter site leases (to the extent such leases require such consent) being assigned and assumed hereunder.

ARTICLE 8: CLOSING DELIVERIES

8.1 Seller Documents. At Closing, Seller shall deliver or cause to be delivered to Buyer:

- (i) the certificate described in Section 7.1(c);
- (ii) an assignment of FCC authorizations assigning the FCC Licenses from Seller to Buyer;
- (iii) an assignment and assumption of contracts assigning the Station Contracts from Seller to Buyer;
- (iv) an assignment and assumption of intangible assets assigning the Intangible Assets (if any) from Seller to Buyer;
- (v) a bill of sale conveying the Tangible Personal Property from Seller to Buyer;
- (vi) a copy of the Required Consents;
- (vii) certified resolutions of Seller's Board of Trustees approving the execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated herein, and the delivery of the closing documents provided for hereunder; and
- (viii) any other instruments of conveyance, assignment and transfer that may be reasonably necessary to convey, transfer and assign the Station Assets from Seller to Buyer, free and clear of Liens, except for Permitted Liens.

8.2 Buyer Documents. At Closing, Buyer shall deliver or cause to be delivered to Seller:

- (i) the Purchase Price in accordance with Sections 1.4 (Purchase Price) and 5.2 (Risk of Loss) and 10.6(d) hereof;
- (ii) the certificate described in Section 6.1(c);
- (iii) an assignment and assumption of contracts assuming the Station Contracts;
- (iv) an assignment and assumption of intangible assets assigning the Intangible Assets (if any) from Seller to Buyer;
- (v) a good standing certificate issued by the Secretary of State of Buyer's jurisdiction of formation;
- (vi) certified resolutions of Buyer's Board of Directors approving the execution, delivery, and performance of this Agreement and the consummation of the

transactions contemplated herein, and the delivery of the closing documents provided for hereunder; and

(vii) such other documents and instruments of assumption that may be necessary to assume the Assumed Obligations (as defined in Section 1.3).

ARTICLE 9: SURVIVAL; INDEMNIFICATION

9.1 Survival.

(a) Except as provided by Section 1.5 (Deposit) and Section 10.4 (Liquidated Damages) with respect to Liquidated Damages, the termination of this Agreement shall not relieve any party of liability for any material breach or default under this Agreement prior to the date of termination. Notwithstanding anything contained herein to the contrary, Section 1.5 (Deposit) and Section 11.1 (Expenses) shall survive any termination of this Agreement.

(b) The representations and warranties in this Agreement, made as of the Closing, shall survive for a period of one (1) year from the Closing Date, whereupon they shall expire and be of no further force or effect, except (i) those under Section 2.1 (Organization), Section 2.2 (Authorization), Section 2.5 (Taxes), Section 3.1 (Organization) and Section 3.2 (Authorization) (collectively, the “Fundamental Representations”), all of which shall survive until the expiration of any applicable statute of limitations, and (ii) that if within such applicable period the indemnified party gives the indemnifying party written notice of a claim for breach thereof describing in reasonable detail the nature and basis of such claim, then such claim shall survive until the earlier of resolution of such claim or expiration of the applicable statute of limitations. The covenants and agreements in this Agreement that are to be performed after the Closing shall survive until performed and any other covenants and agreements shall survive for a period of nine (9) months from the Closing Date.

9.2 Indemnification.

(a) From and after Closing, Seller shall defend, indemnify and hold harmless Buyer and its officers, directors, members and employees from and against and in respect of, and reimburse them for, any and all losses, costs, damages, liabilities and expenses, including reasonable attorneys’ fees and expenses (“Damages”) resulting from:

(i) any material breach by Seller of its representations and warranties made under Article 2 of this Agreement; or

(ii) any material breach by Seller of any material obligation under this Agreement; or

(iii) any material breach by Seller of the Retained Obligations (as defined in Section 1.3); or

(iv) the business or operation of the Station before the Effective Time, except for the Assumed Obligations (as defined in Section 1.3); or

(v) any third party claim, demand, lawsuit or action resulting from any material breach or deviation, as applicable, as described in Section 9.2(a)(i)-(iv).

(b) Notwithstanding the foregoing or anything else in the Agreement to the contrary, Seller shall have no liability to Buyer until Buyer's aggregate Damages exceed the sum of Five Thousand Dollars (\$5,000) ("Basket"), after which the amount of the Basket shall be excluded from any calculation of Damages.

(c) From and after Closing, Buyer shall defend, indemnify and hold harmless Seller and its officers, directors, members and employees from and against and in respect of, and reimburse them for, any and all Damages incurred by Seller in connection any claim, demand, lawsuit or action arising out of or resulting from:

(i) any material breach by Buyer of its representations and warranties made under this Agreement; or

(ii) any material breach by Buyer of any material obligation under this Agreement; or

(iii) any material breach by Buyer of the Assumed Obligations (as defined in Section 1.3); or

(iv) the business or operation of the Station after the Effective Time, except for the Retained Obligations; or

(v) any third party claim, demand, lawsuit or action resulting from any material breach, or the business or operation of the Station, as applicable, as described in Section 9.2(c)(i)-(iv).

(d) Notwithstanding the foregoing or anything else in this Agreement to the contrary, Buyer shall have no liability to Seller until Seller's aggregate Damages exceed the Basket, after which the amount of the Basket shall be excluded from any calculation of Damages.

9.3 Indemnification Procedures for Third Party Claims.

(a) The indemnified party shall give prompt written notice to the indemnifying party of any demand, suit, claim or assertion of liability by third parties that is subject to indemnification hereunder (a "Claim"), but a failure to give such notice or delaying such notice shall not affect the indemnified party's rights or the indemnifying party's obligations except to the extent the indemnifying party's ability to remedy, contest, defend or settle with respect to such Claim is thereby prejudiced and provided that such notice is given within the time period described in Section 9.1 (Survival).

(b) The indemnifying party shall have the right to undertake the defense or opposition to such Claim with counsel selected by it. In the event that the indemnifying party does not undertake such defense or opposition in a timely manner, the indemnified party may undertake the defense, opposition, compromise or settlement of such Claim with counsel selected by it and the indemnifying party shall be required to pay for reasonable attorneys' fees and costs

incurred by the indemnified party (subject to the right of the indemnifying party to assume defense of or opposition to such Claim at any time prior to settlement, compromise or final determination thereof).

(c) Anything in this Agreement to the contrary notwithstanding:

(i) the indemnified party shall have the right, at its own cost and expense, to participate in the defense, opposition, compromise or settlement of the Claim;

(ii) the indemnifying party shall not, without the indemnified party's written consent, settle or compromise any Claim or consent to entry of any judgment that does not include the giving by the claimant to the indemnified party a release from all liability in respect of such Claim subject to the limitations herein; and

(iii) in the event that the indemnifying party undertakes defense of or opposition to any Claim, the indemnified party, by counsel or other representative of its own choosing and at its sole cost and expense, shall have the right to consult with the indemnifying party and its counsel concerning such Claim and the indemnifying party and the indemnified party and their respective counsel shall cooperate in good faith with respect to such Claim.

(d) In determining the amount of any Damages hereunder, the amount shall be determined after deducting the amount of any insurance proceeds and other third party recoveries actually received by Seller or Buyer or any of its affiliates in respect thereof (which proceeds and recoveries Seller or Buyer agrees to use, or to cause any such affiliate to use, diligent efforts to obtain) and the amount of any tax benefit related thereto. If an indemnification payment is received by Seller or Buyer, and Seller or Buyer or any of their affiliates later receives insurance proceeds, other third party recoveries, or tax benefits in respect of the related Damages, Seller or Buyer shall promptly pay to the other a sum equal to the lesser of (y) the actual amount of insurance proceeds, other third party recoveries, and tax benefits or (z) the actual amount of the indemnification payment previously paid by the other with respect to such Damages. Seller and Buyer shall use, and shall cause its affiliates to use, commercially reasonable efforts to mitigate the amount of Damages for which it may be entitled to indemnification hereunder.

9.4 Remedies Exclusive.

(a) The remedies provided in this Article 9 and in Article 10 shall be the exclusive remedies of the parties hereto in connection with the transactions contemplated by this Agreement, including without limitation any breach or non-performance of any representation, warranty, covenant, obligation or agreement contained herein. No party (and no affiliate of any party) may commence any suit, action or proceeding against any other party hereto with respect to the subject matter of this Agreement, whether in contract, tort or otherwise, except to enforce such party's express rights pursuant to this Article 9 or Article 10. The provisions of Articles 9 and 10 were specifically bargained for and reflected in the amounts payable to Seller in connection with the transactions contemplated hereby.

(b) Without limiting the foregoing and notwithstanding anything that may be expressed or implied in this Agreement, Seller and Buyer each agree and acknowledge that

their only recourse hereunder is against the other. Without limiting the generality of the foregoing sentence, Seller and Buyer each agree and acknowledge that (a) no recourse shall be had against any past, current or future affiliate, shareholder, director, officer, employee, agent, trustee, board or other governing entity, or attorney of the other (collectively, the “Excluded Persons”), with respect to the subject matter of this Agreement, and (b) neither it nor any of its affiliates shall commence any suit, action or proceeding against any Excluded Person with respect to the subject matter of this Agreement, whether in contract, tort or otherwise.

9.5 Tax Treatment of Indemnity Payments. It is the intention of the parties to treat any indemnity payment made under this Agreement as an adjustment to the purchase price for all purposes, and the parties agree to file their tax returns accordingly.

ARTICLE 10: TERMINATION; SPECIFIC PERFORMANCE; LIMITATION OF LIABILITY

10.1 Termination. Subject to Section 9.1 (Survival), this Agreement may be terminated prior to Closing as follows:

- (a) by mutual written consent of Buyer and Seller;
- (b) by written notice of Buyer to Seller if Seller breaches its representations or warranties or defaults in the performance of its obligations or covenants set forth in this Agreement and such breach or default is material in the context of the transactions contemplated hereby and is not cured within the Cure Period (as defined in Section 10.2);
- (c) by written notice of Seller to Buyer if Buyer breaches its representations or warranties or defaults in the performance of its obligations or covenants set forth in this Agreement and such breach or default is material in the context of the transactions contemplated hereby and is not cured within the Cure Period; provided, however, that the Cure Period shall not apply to Buyer’s obligations to make the Deposit on the date hereof and to pay the Purchase Price at Closing; or
- (d) by written notice of Seller to Buyer or Buyer to Seller, as long as the terminating party is not in breach of any of its representations or warranties or in default in the performance of any of its obligations or covenants set forth in this Agreement, if Closing does not occur by the date twelve (12) months after the date of this Agreement.

10.2 Cure Period. Each party shall give the other party prompt written notice upon learning of any breach or default by the other party under this Agreement. The term “Cure Period” as used herein means a period commencing on the date Buyer or Seller receives from the other written notice of breach or default hereunder and continuing until the earlier of (i) twenty (20) calendar days thereafter or (ii) the Closing Date; provided, however, that if the breach or default is non-monetary and cannot reasonably be cured within such period but can be cured before the Closing Date, and if diligent efforts to cure promptly commence, then the Cure Period shall continue as long as such diligent efforts to cure continue, but not beyond the Closing Date.

10.3 Specific Performance. Notwithstanding Section 9.4(a), in the event of failure or threatened failure by either party to comply with the terms of this Agreement, the other party shall be entitled to an injunction restraining such failure or threatened failure and, subject to obtaining any necessary FCC consent, to enforce this Agreement by a decree of specific

performance requiring compliance with this Agreement. If a party brings an action to enforce specific performance under this Agreement, the other party shall waive the defense that there is an adequate remedy at law and waive any requirement to post a bond or other security.

10.4 Liquidated Damages. If Seller terminates this Agreement pursuant to Section 10.1(c), then Seller shall be entitled to the Deposit and such payment shall constitute liquidated damages and the sole remedy of Seller for a breach by Buyer of this Agreement. The parties acknowledge and agree that payment of such amount shall constitute payment of liquidated damages and is not a penalty and that the liquidated damages amount is reasonable in light of the substantial but indeterminate harm anticipated to be caused by material breach or default under this Agreement, the difficulty of proof of loss and damages, the inconvenience and non-feasibility of otherwise obtaining an adequate remedy, and the value of the transactions to be consummated hereunder. In addition, if Buyer contests Seller's right to the Deposit, then the prevailing party in any action by Seller to enforce its right to the Deposit shall be entitled to payment by the other party of the reasonable attorneys' fees incurred by the prevailing party in such action.

10.5 Limitation of Liability. Notwithstanding anything in this Agreement to the contrary, neither party shall have any liability to the other under any circumstances for special, indirect, consequential, punitive or exemplary damages or similar damages of any kind, including any damages calculated using a "multiplier" or any other similar method, whether or not foreseeable, occasioned by any failure to perform or the breach or default of any representation, covenant, warranty or other obligation under this Agreement, whether based in negligence or otherwise.

10.6 Special Termination Right of Buyer. Subject to Section 9.1 (Survival), in addition to the termination rights set forth in Section 10.1 (Termination), Buyer may terminate this Agreement prior to Closing as set forth in this Section 10.6:

(a) Buyer may terminate this Agreement by written notice to Seller if LocusPoint Networks LLC ("LPN") or any party affiliated with LPN files with the FCC any petition or opposition to the FCC Application or to Seller's or Buyer's qualifications to hold a broadcast license, and as a result of such filing, either (i) FCC Consent is delayed more than six (6) months after the date on which the FCC Application is filed and it is not then reasonably foreseeable that FCC Consent will be obtained within sixty (60) days thereafter or (ii) FCC Consent is delayed more than eight (8) months after the date on which the FCC Application is filed.

(b) Buyer may terminate this Agreement by written notice to Seller if LPN or any party affiliated with LPN initiates any legal or equitable action to oppose, obstruct or delay the sale of the Station Assets by Seller or purchase of the Station Assets by Buyer and thereby obtains an order from a court of competent jurisdiction that is legally binding on one or both parties to this Agreement that (i) by its terms prevents the Closing; (ii) by its terms imposes conditions on the Closing that either Buyer or Seller are not willing or able to satisfy within ten (10) days after the date on which all other closing conditions set forth in Articles 6 and 7 have been met or waived; or (iii) otherwise delays the Closing for more than eight (8) months after the date on which the FCC Application is filed.

(c) Buyer may terminate this Agreement by written notice to Seller if Buyer is for any reason made a party to any legal or equitable action by LPN or Seller arising out of the dispute between LPN and Seller that is the subject of the litigation described in Schedule 2.10.

(d) In the event that Buyer forebears from exercising its rights to terminate under Section 10.6(a)-(c), and Buyer deems it necessary or advisable to incur legal costs and other related expenses in connection with responding to or defending against any claims or assertions relating to Buyer, then the Purchase Price shall be reduced by such costs and expenses reasonably incurred by Buyer prior to Closing; provided, that Buyer shall notify Seller of such expenses as they are incurred (i.e, within ten (10) days of receiving each invoice). Notwithstanding the immediately foregoing sentence, at any time after such expenses incurred by Buyer exceed Seventy-Five Thousand Dollars (\$75,000.00) in the aggregate, Seller shall have the right to reimburse such expenses to Buyer and terminate this Agreement without further liability to Buyer by giving Buyer ten (10) days' notice of its intent to do so; unless Buyer gives notice to Seller within such 10-day notice period that it agrees to pay such expenses in excess of \$75,000 going forward.

ARTICLE 11: MISCELLANEOUS

11.1 Expenses. Each party shall be solely responsible for all costs and expenses incurred by it in connection with the negotiation, preparation and performance of and compliance with the terms of this Agreement. Transfer or sales or use taxes, fees and charges applicable to the transfer of the Station Assets under this Agreement, if any, shall be paid one-half by Buyer and one-half by Seller. Each party is responsible for any commission, brokerage fee, advisory fee or other similar payment that arises as a result of any agreement or action of it or any party acting on its behalf in connection with this Agreement or the transactions contemplated hereby.

11.2 Further Assurances. After Closing, each party shall from time to time, at the request of and without further cost or expense to the other, execute and deliver such other instruments of conveyance and assumption and take such other actions as may reasonably be requested in order to more effectively consummate the transactions contemplated hereby.

11.3 Assignment. Neither party may assign all or part of this Agreement without the prior written consent of the other party hereto. The terms of this Agreement shall bind and inure to the benefit of the parties' respective successors and any permitted assigns, and no assignment shall relieve any party of any obligation or liability under this Agreement.

11.4 Notices. Any notice pursuant to this Agreement shall be in writing and shall be deemed delivered on the date of personal delivery or confirmed facsimile transmission or confirmed delivery by a nationally recognized overnight courier service, and shall be addressed as follows (or to such other address as any party may request by written notice):

To Seller: San Mateo Community College District
3401 CSM Drive
San Mateo, California 94402
Attn: Executive Vice Chancellor

with copies to: Kathy Blackwood
San Mateo County Community College District
3401 CSM Drive
San Mateo, California 94402

and Pillsbury Winthrop
1200 – 17th St. SW
Washington, DC 20036
Attn: John Hane

To Buyer: Rural California Broadcasting Corporation
5850 Labath Avenue
Rohnert Park, CA 94928
Attn: Nancy Dobbs, President and CEO

with copy to: Gray Miller Persh LLP
1200 New Hampshire Avenue NW, Suite 410
Washington, DC 20036
Attn: Todd D. Gray

11.5 Amendments. No amendment or waiver of compliance with any provision 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 such amendment, waiver, or consent is sought.

11.6 Entire Agreement. This Agreement (including the Schedules hereto) constitutes the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and understandings with respect to the subject matter hereof. No party makes any representation or warranty with respect to the transactions contemplated by this Agreement except as expressly set forth in this Agreement and each party hereby confirms that it has not relied upon any representations or statements, whether written or oral, except those representations and warranties set forth in Article 2 and 3 of this Agreement.

11.7 Severability. If any court or governmental authority holds any provision in this Agreement invalid, illegal or unenforceable under any applicable law, then, so long as no party is deprived of the benefits of this Agreement in any material respect, 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.

11.8 No Beneficiaries. Nothing in this Agreement expressed or implied is intended or shall be construed to give any rights to any person or entity other than the parties hereto and their successors and permitted assigns.

11.9 Governing Law and Venue. The construction and performance of this Agreement shall be governed by the laws of the State of California without giving effect to the

choice of law provisions thereof. Any action to enforce the terms of this Agreement shall be brought in the courts of the State of California with venue lying in the County of San Mateo.

11.10 Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement and the other agreements, documents and instruments contemplated herein, all provisions shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authoring any of the provisions.

11.11 Counterparts. This Agreement may be executed in separate counterparts, each of which will be deemed an original and all of which together will constitute one and the same agreement.

[SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT

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

**San Mateo County Community
College District**

**Rural California Broadcasting
Corporation**

By: _____

By: _____

Printed: _____

Printed: _____

Title: _____

Title: _____

List of Schedules

- 1.1(a) – FCC Licenses
- 1.1(b) – Tangible Personal Property
- 1.1(c) – Station Contracts
- 1.2(l) – Other Excluded Assets
- 1.6 – Repacking Expenses
- 1.7 – Additional Consideration
- 2.10 – Seller Litigation

Schedule 1.1(a)

FCC Licenses, Applications, and Authorizations

1. Television broadcast station license (FCC file no. BLEDT-20091124AHY).
2. License renewal authorization (FCC file no. BREDT-20140721AEJ; expires 12/1/2022).
3. *Construction permit authorizing minor modification of BLEDT-20091124AHY to specify operation on Channel 27 (FCC File No. 0000028093).
4. Television broadcast station auxiliary antenna license (FCC file no. BXLEDT-20120621AAB).
5. Earth Station license E040364 (FCC file no. SES-REG-20040909-01357; expires 9/9/2019).
6. FCC Form 399, Incentive Auction Relocation Reimbursement (file number 0000028092), filed July 11, 2017, and pending with the FCC.

*Pursuant to the FCC's process of "repacking" television broadcast stations, Seller has been assigned to Transition Phase 8, and is required to complete construction and testing of Station's authorized Channel 27 facilities on or before **January 18, 2020**. The Station must discontinue operations on its pre-auction channel on or before **March 13, 2020** (together, the "Repacking Deadlines"). See FCC Public Notice "Incentive Auction Closing and Channel Reassignment Public Notice", DA 17-314 (released April 13, 2017). NOTWITHSTANDING ANYTHING IN THE AGREEMENT OR THE SCHEDULES THERETO TO THE CONTRARY, SELLER MAKES NO REPRESENTATION OR WARRANTY REGARDING THE FEASIBILITY OR ABILITY OF SELLER OR BUYER TO MEET THE FCC'S REPACKING DEADLINES.

Schedule 1.1(b)

Tangible Personal Property

Property subject to Liens identified with a diamond (♦).

Mt. Sutro Transmitter Site Equipment

TRANSMITTER EQUIPMENT			
<u>TRANSMITTER LOCAL NAME</u>	<u>MANUFACTURER</u>	<u>MODEL</u>	<u>STATUS</u>
DTV ANTENNA SYSTEM			ACTIVE
43 WAVEGUIDE COMBINER	DIELECTRIC		ACTIVE
HARRIS DTV TV XMTR	HARRIS	DHD90P4	ACTIVE
MISCELLANEOUS SUTRO SITE EQUIPMENT	MISCELLANEOUS		

Other Tangible Personal Property

MASTER CONTROL EQUIPMENT			
<u>MCR LOCAL NAME</u>	<u>MANUFACTURER</u>	<u>MODEL</u>	<u>STATUS</u>
AES PATCH BAY	ADC	DAB407-4MKII	Active
SDI/HD PATCH BAY	ADC	PPI2226RS-SVJT-BK	Active
AJA-1 FRAME SYNC	AJA VIDEO SYSTEMS	FS-1	Active
AJA-2 FRAME SYNC	AJA VIDEO SYSTEMS	FS-1	Active
SUNDANCE AUTOMATION	AVID	Titan	Active
KVM #1	AVOCENT	AMX 5130	Active
KVM #10	AVOCENT	AMX 5130	Active
KVM #2	AVOCENT	AMX 5130	Active
KVM #3	AVOCENT	AMX 5130	Active
KVM #4	AVOCENT	AMX 5130	Active
KVM #5	AVOCENT	AMX 5130	Active
KVM #6	AVOCENT	AMX 5130	Active
KVM #7	AVOCENT	AMX 5130	Active
KVM #8	AVOCENT	AMX 5130	Active

KVM #9	AVOCENT	AMX 5130	Active
KVM BASE STATION	AVOCENT	AMX 5010	Active
EVERTZ HD KEYER	EVERTZ	HD9625LGA-EAS Plus BP	Active
EVERTZ KEYER #1	EVERTZ	9625LGA Plus EAS	Active
EVERTZ KEYER #2	EVERTZ	9625LGA	Active
EVERTZ KEYER #3	EVERTZ	9625LGA Plus EAS	Active
EVERTZ KEYER #4	EVERTZ	9625LGA Plus EAS	Active
MONITOR WALL ENGINE - MC	EVERTZ	MVP	Active
DPS1 SYNCHRONIZER/TBC	LEITCH	DPS 575	Active
DPS2 SYNCHRONIZER/TBC	LEITCH	DPS 575	Active
MASSLOGGER	MASSTECH	ML-350-015	out of service
20 RACKS AND 30KFT WIRING	MIDDLE ATLANTIC / BELDEN		Active
MEDIAPORT 4CH 1	OMNEON	MIP-5322	Active
MEDIAPORT 4CH 2	OMNEON	MIP-5322	Active
MULTIPORT 1	OMNEON	PR-MIP-5501	Active
MULTIPORT 2	OMNEON	PR-MIP-5501	Active
OMNEON CONTROL SERVER	OMNEON	NCM 2003	Active
PROBROWSE PROXY GEN 1	OMNEON	MPB-1002-G	inactive
PROBROWSE PROXY GEN 2	OMNEON	MPB-1002-G	inactive
PROBROWSE SERVER	OMNEON	MPB-1001-HC	inactive
DVC PRO VCR 4	PANASONIC	AJ-SD930	Active
DVC PRO VCR 8	PANASONIC	AJ-SD930	Active
DVC PRO VCR	PANASONIC	SD255	inactive
DVC PRO VCR	PANASONIC	SD255	inactive
DVC PRO VCR	PANASONIC	SD255	inactive
XD CAM VCR	SONY	PDWHD1500	Active
HD CAM VCR	SONY	HDW-1800	Active
DIGIBETA VCR	SONY	DVW-M2006	Active
MULTI MONITOR (MANY)	WOHLER/MARSH ALL		Active
RACK MT	PANASONIC		Active

MONITORS(3)			
19" MONITORS (MANY)	SAMSUNG		Active
DEKOCAST C	PINNACLE	DEKOCAST	Active
DVD RECORDER	PIONEER	PRV-LX1	inactive
SENCORE ATLAS IRD	SENCORE	MRD 3187A	Active
SENCORE ATLAS IRD	SENCORE	MRD 3187A	Active
SENCORE ATLAS IRD	SENCORE	MRD 3187A	Active
IRD A	THOMSON	RX8200	Active
IRD B	THOMSON	RX8200	Active
IRD C	THOMSON	RX8200	Active
IRD D	THOMSON	RX8200	Active
IRD E	THOMSON	RX8200	Active
IRD F	THOMSON	RX8200	Active
SYNCRONIZER	SNELL & WILCOX	TBS 180AV	Active
DIGI BETA	SONY	DVWM2000	Active
QC2 MONITOR	SONY	BVM-D20F1U	Active
QC3 MONITOR	SONY	BVM-D20F1U	inactive
MULTIPLEXER (2)	TANDBERG	M2/MUXMX5 620	Active
SD ASI RECEIVER #1	TANDBERG	TT1260/DIRB AS	Active
SD ASI RECEIVER #2	TANDBERG	TT1260/DIRB AS	Active
SD ASI RECEIVER #3	TANDBERG	TT1260/DIRB AS	Active
SD ENCODER #1	TANDBERG	M2/ENC/E571 0/ATSC	Active
SD ENCODER #2	TANDBERG	M2/ENC/E571 0/ATSC	Active
SD ENCODER #3	TANDBERG	M2/ENC/E571 0/ATSC	Active
SD ENCODER #4	TANDBERG	M2/ENC/E571 0/ATSC	Active
JUPITER CONTROL SYSTEM	THOMSON	Jupiter	inactive
ROUTER CNTRL PANELS(4)	THOMSON	Various	Active
SI-1	THOMSON	SI-3000C	Active
SI-2	THOMSON	SI-3000C	Active
TRINIX ROUTER	THOMSON	Trinix DV33128	Active
VENUS ROUTER	THOMSON	Venus	Active

VM-1	THOMSON	VM-3000C	Active
QC1 AUDIO	WOHLER	AMP1-DA	Active
QC2 AUDIO	WOHLER	AMP1-DA	Active
WAVEFORM MONITOR	TEKTRONIX	7120	Active
WAVEFORM RASTERIZER	TEKTRONIX	7020	Active
<u>PRODUCTION LOCAL NAME</u>	<u>MANUFACTURER</u>	<u>MODEL</u>	<u>STATUS</u>
BATTERY BELT #1	ANTON BAUER	30/13	ACTIVE
BATTERY BELT #2	ANTON BAUER	30/13	ACTIVE
DIONIC 90 #3	ANTON BAUER	Dionic 90	out of service
DIONIC 90 #4	ANTON BAUER	Dionic 90	out of service
DIONIC 90 #5	ANTON BAUER	Dionic 90	out of service
DIONIC 90 #6	ANTON BAUER	Dionic 90	out of service
QUAD 2702 POWERCHARGER	ANTON BAUER	Quad 2702	out of service
JOKER NEWS COMBO KIT	K5600	K0200/400JBN DOUB+3	ACTIVE
FIELD MIXER	SHURE	FP32A	ACTIVE
FIELD MIXER	SHURE	M67	INACTIVE
FIELD MONITOR	SONY	PVM-8041Q	ACTIVE
Aspect ratio converter	Picolink		Active
XDCAMHD CAMCORDER	SONY	PDWF-335L	ACTIVE
FIELD CAMERA ZOOM CONTROL	CANON	ZSG-200M	ACTIVE
XDCAM WIDE ANGLE LENS	CANON	KH10EX3.6B IRSE	ACTIVE
XDCAM ZOOM LENS	CANON	KH21EX5.7 IRSE SX12	ACTIVE
TRIPOD SYSTEM	Vinten	Vision 10	ACTIVE
TRIPOD SYSTEM (matte box)	O'CONNOR	50	ACTIVE
MATTE BOX	VOCAS	MB-325	ACTIVE
Lavalier Microphone	Sony	ECM- 66	Active
Lavalier Microphone	Sony	ECM- 66	Active
XDCAM HD DISC - DRIVE	SONY	PDW-U1	Active

XDCAM HD DISC DRIVE	SONY	PDW-U1	Active
------------------------	------	--------	--------

Schedule 1.1(c)

Station Contracts

- ◆ Transmitter site lease between Sutro Tower, Inc. and San Mateo County Community College District dated January 16, 2003, as amended May 22, 2014, extended term through February 28, 2020 ("Sutro Lease").
- ◆ Repacking services agreement, Sutro Tower, Inc. and San Mateo County Community College District dated July 31, 2017, term concurrent with Sutro Lease.

- ◆ *Designates Station Contract requiring third party consent.*

Schedule 1.2(l)

Other Excluded Assets

The Rejected Personal Property.

Schedule 1.6
Unreimbursed Repacking Expenses

None.

Schedule 1.7

Additional Consideration

- 1. Television and Radio Announcements.** Beginning on the date of Closing and ending on the date five (5) years thereafter, Buyer shall make available to Seller, at no cost to Seller, on-air underwriting announcement spots of up to thirty (30) seconds in length on KRCB TV 22 and on KRCB FM RADIO 91. Each month Buyer shall produce one (1) announcement for Seller, based on copy provided by Seller, to describe to the Buyer's broadcast area (including but not limited to the San Francisco North Bay Region), its activities and initiatives for the benefit of Seller's alumni, prospective students and parents (the "Messages"). In the alternative, Seller may provide pre-produced announcement to Buyer in a manner and format reasonably acceptable to Buyer. Seller shall be responsible for scheduling the Messages with Buyer on a monthly use-it-or-lose-it basis, and for providing the copy or pre-produced announcements to Buyer at least fourteen (14) days prior to Seller's first desired broadcast date. Buyer will schedule five (5) monthly spot placements on KRCB TV 22 and ten (10) monthly spot placements on KRCB FM RADIO 91. Buyer shall run all Messages between the hours of 6 am and midnight local time on a run-of-schedule basis with approximately equal distribution across dayparts. Should Seller not elect to utilize any Messages by the end of any month, such unused Messages shall be forfeited and may not be carried forward to future months (and any order that is not timely placed by Seller shall be deemed used). Buyer will provide to Seller each month a written summary of when (date and time) the Messages aired on KRCB TV 22 and on KRCB FM RADIO 91 in the previous month, provided that Seller informs Buyer to whom and where this "proof-of-performance" documentation should be sent. The Messages shall conform to the regulations and policies applicable to noncommercial educational broadcasting, including public TV and radio industry standards, and Buyer shall have the right to preempt or reject any Message(s) and otherwise maintain control over the programming of the stations in order to comply with applicable laws (including without limitation FCC rules and regulations) and Buyer's standards and practices, which Buyer shall apply to the Messages on a uniform and non-discriminatory basis as compared to all other underwriting announcements broadcast by each respective station. Buyer shall make-good any preempted or rejected Messages subject to Seller timely providing make-good copy or pre-produced announcements. Notwithstanding anything in the Agreement or in this Schedule 1.7, Seller has no obligation make use of the Messages.
- 2. Student Internships.** At the beginning of the first semester (of Seller's student campuses) following the date of Closing, or another date mutually agreed upon by the parties, until three (3) years thereafter, pursuant to an appropriate internship site agreement between Seller and Buyer with provisions that are customary for community college student internships (but excluding any payments from Seller to Buyer), Buyer shall work with Seller to provide training, in the form of educational internships, at Buyer's studio and office location for up to six of Seller's students per

year (three (3) students per semester) working in Buyer's marketing, development, production, telecommunications, and social media departments. The objective of the training and educational internship program is to provide Seller's students with applicable working experiences that allow the Seller's students to learn and gain onsite training from Buyer's staff. Buyer and Seller agree to cooperate during the three (3) year period in designing and implementing the actual educational internship program. Buyer and Seller will mutually agree on the number of hours the students will work on a weekly basis and the number of weeks per year that the training and educational internship will be offered. Transportation to and from Buyer's studio and office location is the responsibility of the individual students and/or the Seller's educational program. Each year Buyer and Seller will review and evaluate the established educational internship program to consider whether operational and content modifications are necessary and appropriate. The educational internships training shall be unpaid, unless the nature and scope of the responsibilities performed is appropriate for paid services, as determined by Buyer in its reasonable good-faith discretion, in which case Buyer shall make payment for such services. In the first year of the student training pursuant to this Agreement, Buyer and Seller will make reasonable efforts to establish and be operational with the training and educational internship program on or before six (6) weeks prior to the commencement of the first semester. Notwithstanding anything in the Agreement or in this Schedule 1.7, Seller shall have no obligation to make use of the student internships.

3. **Carriage of KCSM(FM) video channel via TV Digital Broadcast.** Beginning at the Closing, and for five (5) years thereafter, Buyer will maintain carriage of the KCSM(FM) video channel as broadcast on the Station as of the Effective Date (the "KCSM(FM) Stream"). Carriage of the KCSM(FM) Stream shall in all cases be consistent with FCC requirements for noncommercial educational stations and Sections 73.503 and 73.621 of the FCC rules. Buyer's retransmission of the KCSM(FM) Stream will include the slide show featuring the Jazz Datebook, community events and Jazz Trivia substantially as they are carried as of the Effective Date, provided that Seller continues to produce and furnish such features to Buyer. Seller shall be responsible for providing the KCSM(FM) Stream to Buyer via a technological solution in an ASI encoded format that the Buyer, in its reasonable discretion, deems appropriate for integration into the Station's multi-channel digital stream. Seller shall be solely responsible for the costs of production and encoding of the KCSM(FM) Stream, for the costs of providing the KCSM(FM) Stream to Buyer, and for the content of the KCSM(FM) Stream, and shall obtain and maintain commercially reasonable media perils insurance for Buyer's broadcast of the KCSM(FM) Stream with such insurance including Buyer as an additional named insured. Buyer, at its sole discretion, shall have the exclusive right to preempt or reject any specific programming of the KCSM(FM) Stream if Buyer, in its reasonable judgment, concludes that such programming does not serve the public interest, or that alternate programming or alternative program scheduling, would better address local needs. As between the parties, all right, title and interest in and to the KCSM(FM) Stream, and the right to authorize the use of the KCSM(FM) Stream in any manner and in any media whatsoever, shall be and remain vested at all times solely in Seller.

Seller shall secure, at its sole cost and expense, any rights licenses that might be necessary for the transmission of the KCSM(FM) Stream over the Station. Notwithstanding anything in the Agreement or in this Schedule 1.7, Seller shall have no obligation to continue providing the KCSM(FM) Stream to Buyer and Seller does not grant any rights to Buyer with respect to the KCSM(FM) Stream.

4. **Local Programs.** Each month during the five (5) year period immediately following Closing, Buyer will broadcast on its primary (.1 or equivalent) channel up to thirty (30) minutes per month of Seller-produced video programming (each, a "Local Program") in a timeslot of Buyer's choice in pre-prime or on weekends. Seller will give notice of its intent to provide a Local Program and its total run time at least two (2) months in advance of the calendar month in which it intends to provide such Local Program (e.g., Seller will give notice no later than September 30 with respect to Local Program to air in December). Each Local Program must be delivered to Buyer no later than one (1) month in advance of the calendar month in which Seller wishes the Local Program to air. Local Programs must adhere to FCC requirements for non-commercial stations, comply with Buyer's reasonable technical standards, and be delivered by Seller to Buyer in a mutually agreeable manner. Buyer, at its sole discretion, shall have the right to preempt or reject any Local Program provided by Seller if Buyer, in its reasonable judgment, concludes that such Local Program does not serve the public interest, or that alternate programming would better address local needs. Notwithstanding anything in the Agreement or in this Schedule 1.7, Seller shall have no obligation to provide any Local Program or to make use of the rights granted to Buyer herein.

Schedule 2.10

Seller Litigation

Seller has sued LocusPoint Networks, LLC, LocusPoint II KCSM, LLC and PricewaterhouseCoopers Advisory Services LLC, and LocusPoint Networks, LLC and LocusPoint II KCSM, LLC have sued Seller, in Superior Court of the State of California, County of San Mateo, in each case raising claims arising out of a series of agreements between LocusPoint Networks, LLC and Seller regarding a potential sale of Station in the FCC's broadcast incentive auction. *See San Mateo County Community College District, et al vs. LocusPoint Networks, LLC, ET. AL.*, 17-CIV-01534; *LocusPoint Networks, LLC, et al vs. San Mateo County Community College District*, 17-CIV-01550. LocusPoint Networks, LLC has asserted to Seller that it believes those same agreements give LocusPoint Networks, LLC the right to block the sale of Station at this time. Seller disputes LocusPoint Networks, LLC's assertions for a number of reasons, including without limitation that LocusPoint Networks, LLC materially breached the agreements such that the provisions LocusPoint Networks, LLC has stated it relies upon for its assertions no longer bind Seller, and because any security interest LocusPoint Networks, LLC may hold is limited to the proceeds of the sale of certain assets used in the operation of the Station and does not extend to the assets themselves.



McGOVERN ESCROW SERVICES

22 Battery Street, Suite 914, San Francisco, CA. 94111
Telephone: 415.735.3645 * Facsimile: 415.358.5732

This Escrow Company holds California Department of Business Oversight Escrow License No. 9635091

Escrow No. 100895

ESCROW INSTRUCTION AND AGREEMENT

This Escrow Instruction and Agreement ("Instruction") dated September __, 2017, shall not be binding on McGovern Escrow Services, Inc. ("Escrow Agent") until acknowledged and executed by all persons identified as principals herein.

This Agreement is entered into by and between SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT, a California Community College District ("Seller"), RURAL CALIFORNIA BROADCASTING CORPORATION, a California non-profit and nonstock corporation ("Buyer"), and the Escrow Agent. Seller and Buyer are sometimes referred to collectively as the "Parties, and each individually is a "Party".

WHEREAS, Seller and Buyer have entered into an Asset Purchase Agreement dated September __, 2017 the ("Agreement").

WHEREAS, under the terms of the Agreement the Seller desires to sell and assign to Buyer, and Buyer wishes to buy and take assignment of, certain assets of Seller and the FCC Licenses of that certain noncommercial educational television station known as KSCM-TV (the "Station"), under terms and conditions set forth in the Agreement.

WHEREAS, under the terms of the Agreement Buyer shall make a cash deposit, in immediately available funds, in the amount of Nine Hundred Sixty Thousand and No/100US (\$960,000.00).

NOW, THEREFORE, the Parties desire to establish an escrow account in which \$960,000.00 (the "Escrow Funds") will be deposited hereto by Buyer.

1. Deposit of Funds

On or before September __, 2017 (the "Closing Date"), Buyer shall cause to be deposited hereto the Escrow Funds.

The Escrow Funds are to be deposited in the form of a wire transfer payable to McGovern Escrow Services, Inc., Escrow No. 100895.

- a. Upon receipt of the Escrow Funds that have been deemed collected, the Escrow Agent is instructed to invest the Escrow Funds in one or more federally insured, interest bearing account. All interest accrued on the Escrow Funds shall be credited to Rural California Broadcasting Corporation for taxation purposes and reported as such.

- b. Concurrent with the execution of this Escrow Agreement, Buyer shall deliver to escrow:
 - i. A copy of the Certificate of Incorporation as filed with the California Secretary of State, and a Resolution designating signing authority for the corporation.
 - ii. Customer Identification form from the officers and/or any other signing authority of Buyer as required for bank interest bearing account purposes.
 - iii. IRS form W-9, Request for Taxpayer Identification Number and Certification from Rural California Broadcasting Corporation.

2. Disbursement of Funds

On or before three (3) business days prior to the Closing as defined in the Agreement, or three (3) business days prior to any other disbursement of Escrow Funds, Seller and Buyer shall submit to escrow mutual written instruction as to:

- a. Any and all prorations and adjustments to be made between the Parties, and
- b. The disbursement of the Escrow Funds to Seller and the accrued interest to Buyer, or
- c. Any other disbursement of the Escrow Funds as contemplated in the Agreement.

3. Obligation to Disburse

Notwithstanding any provision to the contrary herein (or in the General Provisions attached), Escrow Agent shall effect the delivery and disbursement of the Escrow Property as set out in Section 2. within three (3) business days of receipt of the required authorization and instruction from the Parties.

4. Duties of Escrow Agent

Escrow Agent will not be liable for actions or omissions hereunder, except for its own gross negligence, bad faith or willful misconduct and, except with respect to claims based upon such gross negligence, bad faith or willful misconduct, such actions or omissions as are successfully asserted against Escrow Agent. Buyer and Seller shall jointly and severally indemnify and hold harmless Escrow Agent (and any successor Escrow Agent) from and against any and all losses, liabilities, claims, actions, damages and expenses, including reasonable attorney's fees and disbursements, arising out of and in connection with this Agreement. Without limiting the foregoing, Escrow Agent will in no event be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with any written notice of Buyer delivered to Escrow Agent in accordance with this Agreement. Each of Buyer and Seller hereby releases, waives, discharges and covenants not to sue the Escrow Agent for any action taken or omitted to be taken under this Agreement except to the extent caused by Escrow Agent's gross negligence, bad faith or willful misconduct.

5. Termination of Escrow

- a. The date of termination is upon the distribution of the Escrow Property pursuant to this Agreement; provided, however, in the event any funds remain in the account on the first (1st) anniversary of the date of these escrow instructions and Agreement, these escrow instructions and Agreement shall be renewed on an annual basis until all such funds are disbursed subject to the terms of Section 5.(b) below.

b. Should Escrow Agent at any time and for any reason desire to be relieved of its obligations as escrow holder hereunder, the Escrow Agent shall give written notice of its desire to be relieved to the Parties. The Parties shall, within (30) days of the receipt of such notice, appoint a successor escrow agent and instruct Escrow Agent to deliver the Escrow Funds hereunder to the successor escrow agent. If Escrow Agent is not notified of the appointment of a successor escrow agent within sixty (60) days of its transmission of notice under this Section, Escrow Agent shall hold the Escrow Funds until: (i) it receives the authorization and instruction described in Section 2; (ii) it receives a court order instructing it to disburse the Escrow Funds; or (iii) it files a suit in interpleader and deposits Escrow Funds with the court.

6. Independent Review

The Parties have made their own determination as to whether the language in this Instruction memorialize their own respective Agreement, are not usurious, and/or come under any consumer protection laws. McGovern Escrow Services, Inc. makes no representations or warranties with respect to the terms and conditions of the Agreement. The Parties further represent and warrant that each has received sufficient information, either through said party's own legal counsel or other sources of said party's own selection, so as to be able to make an intelligent and informed judgment whether to enter into the Agreement, along with this Escrow Instruction and Agreement. Each undersigned party further state that each has read the document(s) in their entirety prior to executing each such document, and that each has executed the documents voluntarily, with competence and capacity to contract and with the knowledge of the terms significance and legal effect of each such document.

7. The Asset Purchase Agreement

This Escrow Instruction is executed for the purpose of enabling the Escrow Agent to complete this transaction, but is in no way intended to modify, amend, supersede or in any way change the Asset Purchase Agreement, dated September __, 2017 and entered into prior to this Escrow Instruction and Agreement. Escrow Agent is not a party to and is not to be concerned with said Agreement or any matters contained therein, and is responsible only for such matters as are specifically set out in these instructions.

8. Invalidity Provision

Should any provision of this Agreement be found invalid, such invalidity shall not in any way affect the remaining provision of this Agreement.

9. Assignment

This Parties hereto shall not assign any of its rights or delegate any of this duties under this Agreement without prior written consent of the other party and any unauthorized assignment or delegation shall be void and of no effect.

10. Notices

All notices, requests, consents and other communications hereunder to any party pursuant to this Note will be deemed to be sufficient if contained in a written instrument delivered personally or mailed by certified or registered mail postage prepaid or sent electronically by confirmed email transmission, addressed as set forth below, or to such other address as may hereinafter be designated in writing by the recipient to the sender pursuant to this Section 10. Any such notice shall be effective (i) when personally delivered, (ii) one (1) business day after it has been deposited with a nationally-recognized overnight courier, duly addressed and postage prepaid, (iii) two (2) business days after it has been deposited in the United States mail, duly addressed and postage prepaid, or (iv) on the business day of confirmed transmission by facsimile or email. Any party may change such party's address for notice by written notice to the other parties pursuant to the provisions of this Section 10.

To Seller:

San Mateo Community College District
3401 CSM Drive
San Mateo, CA 94402
Attn: Executive Vice Chancellor
Email: blackwoodk@smccd.edu

To Buyer:

Rural California Broadcasting Corporation
5850 Labath Avenue
Rohnert Park, CA 94928
Attn: Nancy Dobbs, President and CEO
Email: nancy_dobbs@krcb.org

To McGovern Escrow Services, Inc:

Ms. Elizabeth McGovern
McGovern Escrow Services, Inc.
22 Battery Street, Suite 914
San Francisco, Ca 94111
Email: elizabeth@mcgovernescrow.com

11. Compensation

Funds for the payment of escrow fees and charges shall be exclusively paid by Buyer and Seller as described in the attached Escrow Fee schedule ("Exhibit A").

12. Amendment of Escrow

This Agreement may not be amended except in writing, executed by the Parties and the Escrow Agent. This Agreement may be executed in counterparts, each of which so executed shall be deemed an original, irrespective of the date of execution and delivery, and the counterparts shall constitute one and the same document.

13. Governing Law and Assignment

This Agreement shall be construed in accordance with and governed by the laws of the State of California and shall be binding upon the parties hereto and their respective successors, heirs, personal representatives and permitted assigns; provided, however, that any assignment or transfer by any party of its rights under this Agreement or with respect to the Escrow Funds shall be void as against the Escrow Agent unless (a) written notice thereof shall be given to the Escrow Agent; and (b) the Escrow Agent shall have consented in writing to such assignment or transfer.

14. Court Orders

Escrow Agent is hereby authorized, in its exclusive discretion, to obey and comply with all final and non-appealable writs, orders, judgments or decrees issued by any court or administrative agency affecting any money, documents or other assets or items held by Escrow Agent. Escrow Agent shall not be liable to any of the Parties hereto, their successors, heirs or personal representatives by reason of Escrow Agent's compliance with such writs, orders, ~~judgments~~ or decrees.

15. USA Patriot Act Notice

The Escrow Agent notifies the Parties hereto that pursuant to the requirements of the USA Patriot Act (Title II of Pub. L. 107-56, signed into law October 26, 2001) (the "Act"), the Escrow Agent is required to obtain, verify and record information that identifies the Parties to this Instruction and Agreement, which information includes the name and address of the Parties and other information that will allow Escrow Agent to identify them in accordance with the Act.

EXHIBIT A

Escrow Fee Agreement

In consideration for complying with the Escrow Instruction and Agreement dated September __, 2017, Pacific Retirement Services, Inc. agrees to pay all applicable fees to McGovern Escrow Services, Inc., as detailed below:

\$3,000.00	Escrow Set-Up and Documentation Fee (Due upon execution and delivery of the Escrow Instruction and Agreement)
25.00	Check disbursement fee per instrument
30.00	Wire transfer fee per event
150.00	Account reconciliation reports, as requested
350.00	Annual Maintenance Fee

Agreed and authorized by:

SELLER:
San Mateo County Community College District,
A California Community College District

BUYER:
Rural California Broadcasting Corporation
a California non-profit and nonstock
corporation

Signature: _____

Signature: _____

Date: _____

Date: _____

Signature: _____

Signature: _____

Date: _____

Date: _____

EXHIBIT B

In accordance with this Escrow Instruction and Agreement dated September __, 2017, the names of the persons who are authorized to give written instructions on behalf of each of the Parties hereof, and exemplars of their respective signatures are as follows:

SELLER:

San Mateo County Community College District,
A California Community College District

Signature

Printed Name

Title

Signature

Printed Name

Title

Number of signatures required: _____

BUYER:

Rural California Broadcasting Corporation
a California non-profit and nonstock
corporation

Signature

Printed Name

Title

Signature

Printed Name

Title

Number of signatures required: _____

GENERAL PROVISIONS

1. **DEPOSITS.** All funds received in escrow shall be deposited with other escrow funds in a non-interest bearing general escrow account or accounts of McGovern Escrow Services, unless otherwise instructed in writing.
2. **OTHER AGREEMENTS.** Unless otherwise specifically provided herein in writing, Escrow Agent is not to be required to read, understand, interpret, or be concerned in any manner whatsoever with any conditional sales contract, purchase agreement, lease contract, security agreement, or other agreement, written or oral, of any kind whatsoever, and is not responsible for the delivery of any papers other than described herein. Escrow Agent is not a party to, or bound by any agreement which may be deposited under, evidenced by, or which may arise out of these instructions.
3. **AGENCY RESPONSIBILITIES.** Escrow Agent is to make no examination of the property being transferred herein or of the condition of or the title thereto. Escrow Agent acts as a depository only and is not responsible or liable in any manner whatever for sufficiency, correctness, genuineness or validity of any instrument deposited with it hereunder, or with respect to the form or execution of the same, or the identity, authority, or right of any person executing or depositing the same.
4. **DEFAULTS.** Escrow Agent shall not be required to take or be bound by notice of any default of any person, or take any action with respect to such default involving any expense or liability, unless notice in writing is given to the Escrow Agent at the address set forth above, of such default by the undersigned or any of them, and unless Escrow Agent is indemnified in a manner satisfactory to it against any and all expense and liability.
5. **NOTICES.** Escrow Agent shall be protected acting upon any notice, request, waiver, consent, receipt or other paper or document reasonably believed by Escrow Agent to be signed by the property party or parties.
6. **JUDGMENT.** Escrow Agent shall not be liable for any error of judgment or for any act done or step taken or omitted by it in good faith or for any mistake or fact of law, or for anything which it may do or refrain from doing in connection herewith, except its own gross negligence or willful misconduct, and Escrow Agent shall have no duties to anyone except those signing these instructions.
7. **COUNSEL.** Escrow Agent may advise with legal counsel of its choice in the event of any dispute or question as to the construction of these instructions, or Escrow Agent's duties hereunder and Escrow Agent shall incur no liability and shall be fully protected in acting in accordance with the opinion and instructions of its counsel. Further, the parties hereto shall reimburse Escrow Agent for the costs, expenses and attorney's fees incurred by Escrow Agent for such advice and counsel. Escrow Agent is hereby authorized to deduct Seller and Buyer portion of such costs, expenses and attorneys fees from any funds held in escrow.
8. **DISAGREEMENTS.** In the event of any disagreement between the undersigned or any of them, and/or the persons named in these instructions, and/or any other person, resulting in adverse claims and demands being made in connection with or for any papers, money or property involved herein or affected hereby, Escrow Agent shall be entitled at its option to refuse to comply with any such claim or demand, as long as such disagreements shall continue, and in so doing Escrow Agent shall not be or become liable for damages or interest to the undersigned or any of them or to any person for its failure or refusal to comply with such conflicting or adverse demands, and Escrow Agent shall be entitled to continue to refrain and refuse to act until:
 - a.
 1. The rights of the adverse claimant had been finally adjudicated in a court assuming and having jurisdiction of the parties and the money, papers and property involved herein or affected hereby and/or
 2. All differences shall have been adjusted by agreement and Escrow Agent shall have been notified thereof in writing signed by all of the persons interested.
 - b. Notwithstanding the foregoing, however, in the event of any such disagreement, Escrow Agent in its sole discretion may (a) file a suit in interpleader for the purpose of having the respective rights of the claimants adjudicated, and then deposit with the court all documents and property held hereunder, and the Parties agree to pay all costs and expenses incurred by Escrow Agent in such action, including attorneys fees, and such costs and expenses shall be included in the judgment in any such action or

(b) submit the matter to the American Arbitration Association, who will name a single arbitrator to conduct an arbitration in San Francisco, California to determine the respective rights of claimants in accordance with the Commercial Arbitration Rules of the American Arbitration Association. All costs and expenses, including attorney's fees incurred with respect to the arbitration by Escrow Agent shall be paid by the Parties in equal proportions. The arbitration award shall be final and without appeal. A judgment upon the award may be entered in any court having jurisdiction of the parties.

9. **INDEMNITY.** In consideration of acceptance of this appointment by Escrow Agent, the Parties agree to defend, indemnify and hold Escrow Agent harmless as to any liability incurred by Escrow Agent to any person, firm or corporation by reason of its having accepted same or in carrying out any of the terms hereof, and to reimburse Escrow Agent for all its expenses, including among other things, counsel fees and court costs incurred by reason of its position or actions taken pursuant to these Escrow Instructions. Subject to Section 4 of the Agreement, the Principals hereby agree that the Escrow Agent shall not be liable to any of them for any action taken by Escrow Agent pursuant to and authorized by the terms hereof.
10. **COURT ORDERS.** Escrow Agent is hereby authorized in its exclusive discretion, to obey and comply with all writs, orders, judgments or decrees issued by any court or administrative agency affecting any money, documents or other securities or writings held by Escrow Agent. Escrow Agent shall not be liable to any of the parties hereto, their successors, heirs or personal representatives, by reason of Escrow Agent's compliance with such writs, orders, judgments or decrees. Notwithstanding such writ, order, judgment or decree is later reversed, modified, set aside or vacated.
11. **USURY.** Escrow Agent is not to be concerned with any question or usury in the processing of this escrow and Escrow Agent is hereby released of any responsibility or liability therefore.
12. **AMENDMENTS TO ESCROW INSTRUCTIONS.** These instructions shall not be subject to rescission or modification except by receipt by Escrow Agent at the address above of written instructions signed by all of the parties hereto or their successors in interest and no such modification shall be effective unless and until consented to in writing by Escrow Agent.
13. **SIGNATURES.** These instructions may be executed in counterparts, each of which so executed shall be deemed as an original, irrespective of the date of its execution and delivery; and such counterparts together with shall constitute one and the same instrument.
14. **COMPLETE AGREEMENT.** These instructions constitute the complete agreement between the Parties and Escrow Agent, with respect to the subject matters referred to in these instructions. These instructions supersede all prior contemporaneous negotiations, promises, covenants, agreements and representations of every nature whatsoever with respect to the subject matters referred to in these instructions, all of which have become merged and finally integrated into these instructions. Each of the parties understands that in the event of any subsequent litigation, controversy or dispute concerning any of the terms, conditions or provisions of these instructions, no party shall be permitted to offer or to introduce any oral evidence concerning any oral promises, agreements, representations or statements relating to the subject matters of these instructions not set forth herein in writing.
15. **SEVERABILITY.** In case any provision in these instructions shall be invalid, illegal or unenforceable, such provision shall be severable from the remainder of these instructions, and the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
16. **APPLICABLE LAW.** These instructions and the rights and obligations of the parties thereto shall be governed by the laws of the State of California.

- 17. **SURVIVAL OF REPRESENTATION.** All representations and warranties set forth herein shall survive the closing of escrow.
- 18. **BINDING OF SUCCESSORS.** The parties intend that these instructions will be binding upon and for the benefit of the parties hereto and their respective successors and assigns.

The Parties each hereby state that they have read the foregoing Escrow Instruction and Agreement, understand and agree to it, and acknowledge receipt of a copy of it.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of this ____ day of September, 2017.

SELLER:
San Mateo County Community College District
A California Community College District

BUYER:
Rural California Broadcasting Corporation
a Ca non-profit and nonstock corporation

Signature: _____

Signature: _____

Date: _____

Date: _____

McGovern Escrow Services, Inc. a California corporation

By: _____
Elizabeth McGovern, President

EXHIBIT G



Board of Trustees

SMCCCD Home > Departments > Board of Trustees > Board Agendas

- Overview >
- Board Members >
- Board Goals >
- Board Agenda >**
- Board Packet >
- Board Calendar >
- Board Minutes >

Board Agendas

Show 10 entries

Search:

Title	Modified On
2017-09-20 Agenda	15th September, 2017
2017-09-13 Agenda	8th September, 2017
2017-09-06 Special Meeting	5th September, 2017
2017-08-14 Special Meeting Agenda	11th August, 2017
2017-08-09 Agenda	4th August, 2017

EXHIBIT H

REVISED AGENDA
SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT
SPECIAL MEETING OF THE BOARD OF TRUSTEES
September 20, 2017, 5:00 p.m.
District Office Board Room, 3401 CSM Drive, San Mateo, CA 94402
Other Locations: Av. Atlântica, 1500, Rio de Janeiro - RJ, 22021-000, Brazil
and 150 Post Street, Suite 442, San Francisco, CA 94108

NOTICE ABOUT PUBLIC PARTICIPATION AT BOARD MEETINGS

The Board welcomes public discussion.

- *The public's comments on agenda items will be taken at the time the item is discussed by the Board.*
- *To comment on items not on the agenda, a member of the public may address the Board under "Statements from the Public on Non-Agenda Items;" at this time, there can be discussion on any matter related to the Colleges or the District, except for personnel items and potential or existing litigation. No more than 20 minutes will be allocated for this section of the agenda. No Board response will be made nor is Board action permitted on matters presented under this agenda topic.*
- *If a member of the public wishes to present a proposal to be included on a future Board agenda, arrangements should be made through the Chancellor's Office at least seven days in advance of the meeting. These matters will be heard ~~under the~~ agenda item "Presentations to the Board by Persons or Delegations." A member of the public may also write to the Board regarding District business; letters can be addressed to 3401 CSM Drive, San Mateo, CA 94402.*
- *Persons with disabilities who require auxiliary aids or services will be provided such aids with a three day notice. For further information, contact the Executive Assistant to the Board at (650) 358-6753.*
- *Regular Board meetings are tape recorded; tapes are kept for one month.*

Government Code §54957.5 states that public records relating to any item on the open session agenda for a regular board meeting should be made available for public inspection. Those records that are distributed less than 72 hours prior to the meeting are available for public inspection at the same time they are distributed to the members of the Board. The Board has designated the Chancellor's Office at 3401 CSM Drive for the purpose of making those public records available for later inspection; members of the public should call 650-358-6753 to arrange a time for such inspection.

6:00 p.m. Call to Order/Roll Call

Pledge of Allegiance

CONSIDERATION OF ITEM TABLED AT THE MEETING OF SEPTEMBER 13, 2017

17-9-104B Ratification of the Purchase Agreement for the Sale of KCSM-TV and Ancillary Agreements

ADJOURNMENT

EXHIBIT I

ASSET PURCHASE AGREEMENT

This **ASSET PURCHASE AGREEMENT** (this "Agreement"), effective as of September ___, 2017 (the "Effective Date"), is entered into between **SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT**, a California Community College District ("Seller"), and **RURAL CALIFORNIA BROADCASTING CORPORATION**, a California non-profit and nonstock corporation ("Buyer").

Recitals

A. Seller is the licensee of and operates noncommercial educational television Station KCSM-TV, San Mateo, California (the "Station"), pursuant to a license issued by the Federal Communications Commission (the "FCC").

B. Seller desires to sell and assign to Buyer, and Buyer wishes to buy and take assignment of, certain assets of Seller and the FCC Licenses as set forth herein on the terms and subject to the conditions hereinafter set forth, subject to the prior approval of the FCC.

In consideration of the foregoing and the mutual promises contained herein, Buyer and Seller, intending to be legally bound, hereby agree as follows:

Agreement

ARTICLE 1: PURCHASE OF ASSETS

1.1 Station Assets. On the terms and subject to the conditions hereof, at Closing (as defined in Section 1.8), Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase and acquire from Seller, all right, title and interest of Seller in and to the assets owned and held by Seller and described in this Section 1.1 (collectively, the "Station Assets"). The Station Assets consist of:

(a) all transferable FCC licenses, permits and other authorizations with respect to the Station (the "FCC Licenses"), which are listed on *Schedule 1.1(a)*, including any renewals or modifications thereof between the date hereof and Closing;

(b) the equipment, transmitters, and other tangible personal property that are used or held for use in the operation of the Station and listed on *Schedule 1.1(b)*, except for (i) any retirements or dispositions thereof made between the date hereof and Closing in the ordinary course of business in accordance with Section 4.1(c) hereof and (ii) the Rejected Personal Property (as defined in Section 2.6) (the "Tangible Personal Property");

(c) the contracts, agreements and leases that are used in the operation of the Station and listed on *Schedule 1.1(c)*, and all other such contracts, agreements and leases entered into between the date hereof and Closing subject to the limitations set forth in Section 4.1(f) (the "Station Contracts"); and

(d) all files, documents and records exclusively relating to the Station Assets or required by the FCC to be kept by the Station, including the Station's local public

files, engineering data and logs, Form 399 filed with the FCC specifying estimated expenses related to Repacking (as defined in Section 1.6) and all Attachments thereto, together with all quotations, studies and correspondence relating to the KCSM repack plan, but excluding records included in or related to Excluded Assets (as defined in Section 1.2).

The Station Assets shall be transferred to Buyer free and clear of liens, claims and encumbrances ("Liens"), except for Assumed Obligations (defined in Section 1.3), liens that will be released at or prior to Closing, liens listed on *Schedule 1.1(c)* hereto, and such other liens, claims, restrictions, and other exceptions that do not in any material respect detract from the value of the property subject thereto or impair the use thereof in the ordinary course of the business of the Station (collectively, "Permitted Liens").

1.2 Excluded Assets. Notwithstanding anything to the contrary contained in this Agreement and for the purposes of clarity, the Parties agree that the Station Assets shall not include the following assets or any rights, title and interest therein (the "Excluded Assets"):

(a) all cash and cash equivalents, including ~~without limitation certificates of~~ deposit, commercial paper, treasury bills, marketable securities, money market accounts and all such similar accounts or investments;

(b) all tangible and intangible personal property retired or disposed of between the date of this Agreement and Closing in accordance with Article 4;

(c) all Seller business records, including, without limitation, financial records, charter documents, and books and records relating to the organization and existence of Seller, duplicate copies of the records of the Station, and all records not relating to the operation of the Station;

(d) all contracts of insurance, all coverages and proceeds thereunder and all rights in connection therewith, including without limitation rights arising from any refunds due with respect to insurance premium payments to the extent related to such insurance policies;

(e) all pension, profit sharing plans and trusts and the assets thereof and any other employee benefit plan or arrangement and the assets thereof, if any;

(f) all receivables (if any) and any other rights to receipt of cash that accrue or have accrued prior to the Effective Time (as defined in Section 1.6) or otherwise arising during or attributable to any period prior to the Effective Time (the "Receivables");

(g) all rights and claims, whether mature, contingent or otherwise, against third parties with respect to the Station and the Station Assets, to the extent arising during or attributable to any period prior to the Effective Time (as defined in Section 1.6);

(h) all deposits and prepaid expenses (and rights arising therefrom or related thereto), except to the extent Seller receives a credit therefor under Section 1.6 (Prorations and Adjustments);

(i) all rights and claims, whether mature, contingent or otherwise, primarily related to the Retained Obligations (as defined in Section 1.3);

(j) all assets used or held for use in the operation of any other radio or television station (other than the Station) owned or operated by Seller or an affiliate of Seller, or shared between any such station and the Station, except for the items specifically set forth on *Schedule 1.1(b)*;

(k) all intellectual property associated with the Station, including trademarks, trade names, service marks, internet domain names and websites, copyrights, slogans, or logos, including without limitation all intellectual property using or related to the call signs "KCSM" or "KCSM-TV", or any variation thereof, together with Seller's programming information and studies, marketing and demographic data, viewership studies and correspondence; and

(l) the items listed in *Schedule 1.2(l)* hereto.

1.3 Assumption of Obligations. On the Closing Date (as defined in Section 1.8), Buyer shall assume the (i) obligations of Seller arising during, or attributable to, any period of time on or after the Closing Date under the Station Contracts, (ii) all obligations and liabilities arising out of Buyer's ownership of the Station Assets, and (iii) any other liabilities of Seller to the extent Buyer receives a credit therefor under Section 1.6 (Prorations and Adjustments) (collectively, the "Assumed Obligations"). Except for the Assumed Obligations, Buyer does not assume, and will not be deemed by the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby to have assumed, any other liabilities or obligations of Seller (the "Retained Obligations").

1.4 Purchase Price. In consideration for the sale of the Station Assets to Buyer, at Closing Buyer shall pay Seller, by wire transfer of immediately available funds, the sum of Twelve Million Dollars (\$12,000,000.00) (including the Deposit (as defined in Section 1.5), subject to any adjustment pursuant to Section 1.6 (Prorations and Adjustments) (the "Purchase Price").

1.5 Deposit. On the date of this Agreement, Buyer shall make a cash deposit in immediately available funds in an amount equal to Nine Hundred and Sixty Thousand Dollars (\$960,000.00) (the "Deposit") with McGovern Escrow Services, Inc. (the "Escrow Agent") pursuant to the Escrow Agreement (the "Escrow Agreement") of even date herewith among Buyer, Seller and the Escrow Agent. At Closing, the Deposit shall be disbursed to Seller and applied to the Purchase Price and any interest accrued thereon shall be disbursed to Buyer. If this Agreement is terminated by Seller pursuant to Section 10.1(c), the Deposit and any interest accrued thereon shall be disbursed to Seller pursuant to Section 10.4 (Liquidated Damages). If this Agreement is terminated pursuant any other provision, the Deposit and any interest accrued thereon shall be disbursed to Buyer. The parties shall each cooperate to instruct the Escrow Agent to disburse the Deposit and all interest thereon to the party entitled thereto and shall not, by any act or omission, delay or prevent any such disbursement unless contested by a party in good faith in writing within five (5) business days of a disbursement request, in which event the Deposit shall remain with the Escrow Agent until the parties' dispute is resolved. Any failure by Buyer to make the Deposit on the date hereof constitutes a material default as to which the Cure

Period under Section 10.2 (Cure Period) shall not apply and shall entitle Seller to immediately terminate this Agreement.

1.6 Prorations and Adjustments. All prepaid and deferred income and expenses relating to the Station Assets and arising from the operation of the Station shall be prorated between Buyer and Seller in accordance with generally accepted accounting principles (“GAAP”) as of 12:01 a.m. on the day of Closing (the “Effective Time”). Such prorations shall include without limitation all taxes (except transfer taxes as provided by Section 11.1 (Expenses), music and other license fees, FCC regulatory fees, utility expenses, rent and other amounts under Station Contracts, and similar prepaid and deferred items. Seller shall receive a credit for all of the Station’s deposits and prepaid expenses to the extent they inure to Buyer’s benefit. Except as set forth in *Schedule 1.6*, Buyer will reimburse Seller for any expenses related to the Station’s involuntary channel reassignment in connection with reorganization of the television broadcast band pursuant to Section 6403(b) of the Middle Class Tax Relief and Job Creation Act of 2012 (“Repacking”) incurred by Seller but not reimbursed to Seller from the United States Treasury’s Repacking reimbursement fund as of the Effective Time, subject to Seller’s remittance to Buyer of any subsequent reimbursements received by Seller. To the extent possible, initial prorations and adjustments shall be made on the Closing Date, with final prorations and adjustments made no later than ninety (90) calendar days after Closing.

1.7 Additional Consideration. In further consideration for the sale of the Station Assets to Buyer, in addition to the Purchase Price, Buyer shall provide to Seller the additional consideration as set forth in *Schedule 1.7*.

1.8 Closing. The consummation of the sale and purchase of the Station Assets provided for in this Agreement (the “Closing”) shall take place on or before the tenth (10th) business day after the date on which the FCC Consent (as defined in Section 1.9) becomes a Final Order (as defined in Section 7.3) or on such other day after such FCC Consent as Buyer and Seller may mutually agree, subject to the satisfaction or waiver of the conditions set forth in Article 6 and Article 7. The date on which the Closing is to occur is referred to herein as the “Closing Date.”

1.9 FCC Consent. Within ten (10) business days after the date of this Agreement, Buyer and Seller shall file an application with the FCC (the “FCC Application”) requesting FCC consent to the assignment of the FCC Licenses to Buyer. FCC consent to the FCC Application without any material adverse conditions other than those of general applicability is referred to herein as the “FCC Consent”. Buyer and Seller shall diligently prosecute the FCC Application and otherwise use their commercially reasonable efforts to obtain the FCC Consent as soon as possible. Buyer and Seller shall notify each other of all documents filed with or received from any governmental agency with respect to this Agreement or the transactions contemplated hereby. Buyer and Seller shall furnish each other with such information and assistance as the other may reasonably request in connection with their preparation of any governmental filing hereunder. Except as otherwise provided herein, each party will be solely responsible for the expenses incurred by it in the preparation, filing, and prosecution of its respective portion of the FCC Application. Neither Buyer nor Seller shall take any intentional action that would, or intentionally fail to take such action the failure of which to take would, reasonably be expected to have the effect of materially delaying the issuance of the FCC Consent.

1.10 Repacking. Buyer acknowledges that it has reviewed Seller's plans, including equipment specifications, related to Repacking (as defined in Section 1.6). Seller agrees to give Buyer advance notice (which may be by email) of any material changes to the equipment specifications and vendors and to consider Buyer's recommendations regarding Repacking equipment specifications. For clarity, Seller has no obligation to Buyer with respect to Repacking, including without limitation any obligation to accept Buyer's recommendations regarding equipment specifications, except as expressly set forth in this Agreement.

ARTICLE 2: SELLER REPRESENTATIONS AND WARRANTIES

Seller makes the following representations and warranties to Buyer:

2.1 Organization. Seller is a California Community College District duly organized, validly existing and in good standing under the laws of the State of California. Seller has all requisite power and authority (i) to own, lease and use its assets as presently owned, leased and used, (ii) for the conduct the business and operations of Seller as presently conducted, (iii) to execute and deliver this Agreement, and (iv) to perform and comply with all of the terms, covenants, and conditions to be performed and complied with by Seller hereunder.

2.2 Authorization. The execution, delivery and performance of this Agreement by Seller have been duly authorized and approved by all necessary action of Seller and do not require any further authorization or consent of Seller. This Agreement is a legal, valid and binding agreement of Seller enforceable in accordance with its terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

2.3 No Conflicts. Except for the FCC Consent and consents to assign certain of the Station Contracts, and except as otherwise as set forth on *Schedule 2.10*, the execution, delivery and performance by Seller of this Agreement and the consummation by Seller of the transactions contemplated hereby do not conflict with any organizational documents of Seller or any other material contract to which Seller is bound, or any law, judgment, order, or decree to which Seller is subject, or require the consent or approval of, or a filing by Seller with, any governmental or regulatory authority.

2.4 FCC Licenses. Seller is the holder of the FCC Licenses described on *Schedule 1.1(a)*, which are all of the governmental licenses, permits and authorizations required for the present operation of the Station. The FCC Licenses are in full force and effect and have not been revoked, suspended, canceled, rescinded or terminated and have not expired. Except with respect to Repacking as set forth in *Schedule 1.1(a)*, there is no pending, or, to Seller's knowledge threatened, action by or before the FCC to revoke, suspend, cancel, rescind or materially adversely modify any of the FCC Licenses (other than proceedings to amend FCC rules and regulations of general applicability). There is not issued or outstanding, by or before the FCC, any order to show cause, notice of violation, notice of apparent liability, or order of forfeiture against the Station or against Seller with respect to the Station that could result in any such action. The Station is operating in compliance in all material respects with the FCC Licenses, the Communications Act of 1934, as amended (the "Communications Act"), and the

rules, regulations and policies of the FCC, other than such non-compliance as would not have a material adverse effect on Buyer, the Station Assets or the transactions contemplated by this Agreement. All material reports and filings required to be filed with the FCC by Seller with respect to the Station have been timely filed and all such reports and filings are accurate and complete, other than as would not have a material adverse effect on Buyer, the Station Assets or the transactions contemplated by this Agreement.

2.5 Taxes. Seller is not subject to taxation other than with respect to employment and sales and use taxes. It has timely filed all required tax returns in the manner prescribed by law, and all such tax returns are true, correct and complete in all material respects. Seller has properly accrued or paid to the extent such taxes have become due all taxes due from Seller. Seller has properly withheld all taxes as required. There are no liens for taxes upon the Station Assets. There is no dispute or claim concerning any tax liability relating to Seller either claimed or raised by any taxing authority. There are no pending tax audits or proposed tax audits of which Seller has notice.

2.6 Personal Property. ~~Schedule 1.1(b)~~ contains a list of all material items of Tangible Personal Property included in the Station Assets. Except as described in *Schedule 1.1(b)*, Seller has good title to or a valid leasehold or license interest in such Tangible Personal Property free and clear of Liens other than Permitted Liens. Subject the foregoing, each item of Tangible Personal Property is sold "as is" as of the Effective Date. Buyer shall give notice to Seller within forty (40) days after the date on which the FCC Application is filed of any items listed on *Schedule 1.1(b)* (other than the Sutro Equipment) it does not wish to acquire at closing, and *Schedule 1.1(b)* shall be deemed amended to exclude such items (such excluded items, the "Rejected Personal Property"), and Buyer shall thereafter have no rights with respect to the Rejected Personal Property.

2.7 Contracts. *Schedule 1.1(c)* contains a list of all contracts that are included in the Station Contracts. The Station Contracts requiring the consent of a third party to assignment are identified on *Schedule 1.1(c)*. Each of the Station Contracts is in effect and is binding upon Seller and the other parties thereto (subject to bankruptcy, insolvency, reorganization or other similar laws relating to or affecting the enforcement of creditors' rights generally). Seller has performed its obligations under each of the Station Contracts in all material respects, and is not in material default thereunder, and no other party to any of the Station Contracts is in default thereunder in any material respect.

2.8 Insurance. All of the Tangible Personal Property is (a) self-insured against loss or damage up to a limit of \$150,000 in accordance with California law and Seller's established practice, and such insurance will be maintained in effect by Seller until the Closing, and (b) insured with a commercial insurance company for loss or damage in excess of the self-insurance amount up to \$5,000,000.

2.9 Compliance with Law. Other than such non-compliance as would not have a material adverse effect on a reasonable buyer, the Station Assets or the transactions contemplated by this Agreement, Seller has complied with all laws, rules and regulations, including without limitation all FCC rules and regulations applicable to the operation of the Station, and all decrees and orders of any court or governmental authority which are applicable to the operation of the Station. To Seller's knowledge, there are no claims or investigations by

the government pending or threatened against Seller in respect of the Station except those affecting the industry generally.

2.10 Litigation. Except as set forth on *Schedule 2.10*, there is no action, suit or proceeding pending or, to Seller's knowledge, threatened against Seller in respect to the Station Assets that will or threatens to subject Buyer to liability or which will or threatens to affect Seller's ability to perform its obligations under this Agreement. Seller is not operating under or subject to any order, writ, injunction or decree relating to the Station Assets of any court or governmental authority which would have a material adverse effect on the condition of the Station Assets or on the ability of Seller to enter into this Agreement or consummate the transactions contemplated hereby, other than those of general applicability (e.g., Repacking).

2.11 Disclaimer of Other Express and Implied Representations and Warranties. Except for the representations and warranties expressly made by Seller in this Article 2, Seller makes no other representations or warranties, express or implied, whether statutory or by common law regarding Seller, the business and operation of the Station, or the Station Assets.

2.12 No Other Representations or Warranties. Seller agrees that neither Buyer nor any of its representatives has made and shall not be deemed to have made, nor has Seller or any of its representatives relied on, any representation, warranty, covenant or agreement, express or implied, or any statement or information, with respect to Buyer, its business, or its proposed acquisition and operation of the Station, other than those representations, warranties, covenants and agreements explicitly set forth in Article 3. Seller further acknowledges and agrees that (a) it has made its own investigation into, and based thereon has formed an independent judgment concerning the Buyer, its business and the proposed acquisition and operation of the Station, and (b) Buyer has made available such information about Buyer as Seller has reasonably requested.

ARTICLE 3: BUYER REPRESENTATIONS AND WARRANTIES

Buyer hereby makes the following representations and warranties to Seller:

3.1 Organization. Buyer is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, and is, or will be at Closing, qualified to do business in the state of California. Buyer has the requisite power and authority to execute, deliver and perform this Agreement and all of the other agreements and instruments to be executed and delivered by Buyer pursuant hereto and to consummate the transactions contemplated hereby.

3.2 Authorization. The execution, delivery and performance of this Agreement by Buyer has been duly authorized and approved by all necessary action of Buyer and do not require any further authorization or consent of Buyer. This Agreement is a legal, valid and binding agreement of Buyer enforceable in accordance with its terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

3.3 No Conflicts. Except for the FCC Consent, the execution, delivery and performance by Buyer of this Agreement and the consummation by Buyer of any of the transactions contemplated hereby do not conflict with any organizational documents of Buyer, any contract or agreement to which Buyer is a party or is by which it is bound, or any law, judgment, order or decree to which Buyer is subject, or require the consent or approval of, or a filing by Buyer with, any governmental or regulatory authority or any third party.

3.4 Litigation. There is no action, suit or proceeding pending or, to Buyer's knowledge, threatened against Buyer which questions the legality or propriety of the transactions contemplated by this Agreement or could materially adversely affect the ability of Buyer to perform its obligations hereunder.

3.5 Qualification. Buyer is legally, financially and otherwise qualified to be the licensee of, acquire, own and operate the Station under the Communications Act and the rules, regulations and policies of the FCC, including, but not limited to, eligibility to hold a noncommercial educational license under Section 73.621 of those rules. There are no facts that would, under existing law and the existing rules, regulations, policies and procedures of the FCC, disqualify Buyer as an assignee of the FCC Licenses or as the owner and operator of the Station, or that that would reasonably be expected to delay the FCC's processing of the FCC Application because of Buyer's qualifications. No divestiture, waiver of or exemption from any existing FCC rule or policy on the part of Buyer is necessary for the FCC Consent to be obtained.

3.6 Financing. Buyer has on hand or from committed funds financial resources sufficient to consummate the transactions contemplated by this Agreement and to operate the Station after the Closing Date. Buyer's obligations hereunder are not subject to or conditioned upon it obtaining financing or a financing commitment of any nature.

3.7 No Other Representations or Warranties. Buyer agrees that neither Seller nor any of its representatives has made and shall not be deemed to have made, nor has Buyer or any of its representatives relied on, any representation, warranty, covenant or agreement, express or implied, or any statement or information, with respect to Seller, its business, the Station, or the Station Assets, other than those representations, warranties, covenants and agreements explicitly set forth in Article 2. Buyer further acknowledges and agrees that (a) it has made its own investigation into, and based thereon has formed an independent judgment concerning the Station and the Station Assets, and (b) Seller has made available such information about the Station and the Station Assets as Buyer has reasonably requested.

ARTICLE 4: SELLER AND BUYER COVENANTS

4.1 Seller's Covenants. Between the date hereof and Closing, except as permitted by this Agreement or with the prior written consent of Buyer, which shall not be unreasonably withheld, delayed or conditioned, Seller shall:

- (a) use commercially reasonable efforts to operate the Station in the ordinary course of business (for avoidance of doubt, any expense reductions made consistent with Seller's past practices shall be deemed in the ordinary course of business) and in all material respects in accordance with FCC rules and regulations and with all other applicable laws, regulations, rules and orders;

(b) except with respect to Repacking as set forth in *Schedule 1.1(a)* and Section 4.1(h), not modify, and in all material respects maintain in full force and effect, the FCC Licenses;

(c) except in the ordinary course of business, not sell, lease or dispose of or agree to sell, lease or dispose of any of the Station Assets unless replaced with similar items of substantially equal or greater value and utility, or create, assume or permit to exist any Liens upon the Station Assets, except for Permitted Liens, and not dissolve, liquidate, merge or consolidate with any other entity;

(d) use commercially reasonable efforts to maintain the Tangible Personal Property in the ordinary course of business;

(e) upon reasonable notice, give Buyer and its representatives reasonable access during normal business hours to the Station Assets, and furnish Buyer with information relating to the Station Assets that Buyer may reasonably request, provided that such access rights shall not be exercised in a manner that interferes with the operation of the Station;

(f) not enter into new Station Contracts that will be binding upon Buyer after Closing or amend or terminate any existing Station Contracts, except for Station Contracts made, amended or terminated with Buyer's prior written consent;

(g) cooperate with Buyer in timely filing such applications and other material as may be required to obtain FCC Consent to the assignment of the FCC Licenses to Buyer, including, but not limited to, providing the FCC with such information as it may reasonably request, assisting Buyer in providing such information, where appropriate, and generally using commercially reasonable efforts to obtain the prompt and timely FCC Consent; and

(h) take such commercially reasonable steps as are required by the Mt. Sutro transmitter site landlord and, in consultation with Buyer as provided by Section 1.10 (Repacking), such other steps as Seller reasonably deems necessary and appropriate, in each case to enable the Station to meet the Repacking requirements and schedule established by the FCC.

4.2 Buyer's Covenants. Between the date hereof and Closing, except as permitted by this Agreement or with the prior written consent of Seller, which shall not be unreasonably withheld, delayed or conditioned, Buyer shall:

(a) take no action that would reasonably be expected to impair its qualifications to be the licensee of the Station, materially delay obtaining the FCC Consent, result in its disqualification under the rules of the FCC to be the licensee of the Station, or that would require it to obtain a waiver of the FCC Rules in order to obtain the FCC Consent;

(b) cooperate with Seller in timely filing such applications and other material as may be required to obtain FCC Consent to the assignment of the FCC Licenses to Buyer, including, but not limited to, providing the FCC with such information as it may reasonably request, assisting Seller in providing such information, where appropriate, and

generally using commercially reasonable efforts to obtain the prompt and timely FCC Consent; and

(c) after joining in the filing of the application for FCC Consent, apply promptly to the FCC for a change in the Station call sign to take effect upon Closing so as to avoid confusion with Seller's continuing operation of Station KCSM (FM), San Mateo, California.

ARTICLE 5: JOINT COVENANTS

Buyer and Seller hereby covenant and agree as follows:

5.1 Control. Buyer shall not, directly or indirectly, control, supervise or direct the operation of the Station prior to Closing. Consistent with the Communications Act and the FCC rules and regulations, control, supervision and direction of the operation of the Station prior to Closing shall remain the responsibility of Seller as the holder of the FCC Licenses.

5.2 Risk of Loss. Seller shall bear the risk of any loss of or damage to the Tangible Personal Property located at the Mt. Sutro transmitter site and necessary for the operation of the Station as it is operated as of the Effective Date (the "Sutro Equipment") at all times until the Closing, and Buyer shall bear the risk of any such loss or damage thereafter. In the event that any loss of or material damage to the Sutro Equipment occurs after the Effective Date but prior to Closing, then upon becoming aware of such loss or material damage, Seller shall use commercially reasonable efforts to promptly notify Buyer in writing, and it shall be the responsibility of Seller, prior to Closing, to repair or cause to be repaired or replaced, and to restore, the affected Sutro Equipment substantially to its condition prior to any such loss, damage or destruction; provided, that in the event that any Sutro Equipment is not repaired, replaced, or restored prior to Closing, Buyer, at its sole option, upon written notice to Seller: (a) may elect to postpone the Closing until the earlier of (A) such time as the property has been repaired, replaced, or restored in all material respects, or (B) up to six (6) months from the date when all other conditions to Closing herein have been satisfied (other than those conditions that by their nature are to be satisfied at Closing, but subject to the satisfaction of those conditions at such time); or (b) may at any time during such six (6) month period elect to consummate the Closing and accept the property in its then condition, in which event the Purchase Price shall be reduced by the estimated cost of such repair, replacement or restoration of the Sutro Equipment as determined by an independent third-party engineer agreeable to both Parties, which engineer Seller and Buyer shall instruct to base the estimate on the least expensive approach that complies with good engineering practices, considering the timeframe of Repacking. If Buyer shall extend the time for Closing pursuant to clause (a) above, the provisions of Section 10.1(d) shall be tolled for such time as Buyer has elected to postpone the Closing pursuant to this Section 5.2 and Seller is using reasonable best efforts to effect such repair, replacement or restoration, and for five (5) business days after the property involved has been repaired, replaced or restored in all material respects.

5.3 Consents.

(a) The parties shall use commercially reasonable efforts to obtain any third party consents necessary for the assignment of any Station Contract (which commercially

reasonable efforts shall not require any payment to any such third party), but no such consents shall be conditions to Closing except for the Required Consents. Receipt of consents designated with a diamond on *Schedule 1.1(c)* shall be a condition precedent to Buyer's obligation to close under this Agreement (the "Required Consents").

(b) To the extent that any Station Contract may not be assigned without the consent of any third party, and such consent is not obtained prior to Closing, this Agreement and any assignment executed pursuant to this Agreement shall not constitute an assignment of such Station Contract; provided, however, with respect to each such Station Contract, Seller and Buyer shall cooperate to the extent feasible in effecting a lawful and commercially reasonable arrangement under which Buyer shall receive the benefits under the Station Contract from and after Closing, and to the extent of the benefits received, Buyer shall pay and perform Seller's obligations arising under the Station Contract from and after Closing in accordance with its terms. This subparagraph 5.3(b) shall not apply to the Required Consents.

5.4 FCC Qualification. Neither Buyer nor any person with an attributable interest in Buyer shall file any application to acquire any station or otherwise operate any station if, as a result, such action would cause Buyer, or any person with an attributable interest in Buyer, to have an attributable interest in, and/or seek to acquire an attributable interest in, any station(s) which would involve a greater number of stations than would be permitted, absent an exemption or waiver, under the Communications Act, or any of the rules, regulations or policies the FCC, including the FCC's multiple ownership rules, in effect from time to time, or which would raise market concentration questions under applicable law.

5.5 Actions. After Closing, if reasonably requested by Seller, Buyer shall cooperate with Seller in the investigation, defense or prosecution of any action that is pending or threatened against Seller or its affiliates with respect to the Station, whether or not such action is subject to a claim for indemnification pursuant to this Agreement; provided, however, that Seller shall reimburse Buyer for the out-of-pocket costs (including reasonable attorneys' fees), if any, reasonably incurred by Buyer to comply with this Section 5.5.

ARTICLE 6: SELLER CLOSING CONDITIONS

The obligation of Seller to consummate the Closing hereunder is subject to satisfaction, at or prior to Closing, of each of the following conditions (unless waived in writing by Seller):

6.1 Representations and Covenants.

(a) The representations and warranties of Buyer 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.

(b) The covenants and agreements to be complied with and performed by Buyer at or prior to Closing shall have been complied with and performed in all material respects.

(c) Seller shall have received a certificate dated as of the Closing Date from Buyer executed by an authorized officer of Buyer to the effect that the conditions set forth in Sections 6.1(a) and (b) have been satisfied.

6.2 Proceedings. Neither Seller nor Buyer shall be subject to any court or governmental order or injunction restraining or prohibiting the consummation of the transactions contemplated hereby.

6.3 FCC Authorization. The FCC Consent shall have been obtained.

6.4 Deliveries. Buyer shall have complied with its obligations set forth in Section 8.2 (Buyer Documents).

ARTICLE 7: BUYER CLOSING CONDITIONS

The obligation of Buyer to consummate the Closing hereunder is subject to satisfaction, at or prior to Closing, of each of the following conditions (unless waived in writing by Buyer):

7.1 Representations and Covenants.

(a) The representations and warranties of Seller 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.

(b) The covenants and agreements to be complied with and performed by Seller at or prior to Closing shall have been complied with and performed in all material respects.

(c) Buyer shall have received a certificate dated as of the Closing Date from Seller executed by an authorized official of Seller to the effect that the conditions set forth in Sections 7.1(a) and (b) have been satisfied.

7.2 Proceedings. Neither Seller nor Buyer shall be subject to any court or governmental order or injunction restraining or prohibiting the consummation of the transactions contemplated hereby.

7.3 FCC Authorization. The FCC Consent shall have been obtained and, unless waived by Buyer, the FCC Consent shall have become a Final Order. For purposes of this Agreement, the term "Final Order" shall mean that action shall have been taken by the FCC (including action duly taken by the FCC's staff, pursuant to delegated authority) which shall not have been reversed, stayed, enjoined, set aside, annulled or suspended; with respect to which no timely request for stay, petition for rehearing, appeal or certiorari or *sua sponte* action of the FCC with comparable effect shall be pending; and as to which the normal time for filing any such request, petition, appeal, certiorari or for the taking of any such *sua sponte* action by the FCC shall have expired or otherwise terminated.

7.4 Deliveries. Seller shall have complied with its obligations set forth in Section 8.1 (Seller Documents).

7.5 Consents. The Required Consent shall have been obtained, including but not limited to landlord consents for all studio and transmitter site leases (to the extent such leases require such consent) being assigned and assumed hereunder.

ARTICLE 8: CLOSING DELIVERIES

8.1 Seller Documents. At Closing, Seller shall deliver or cause to be delivered to Buyer:

- (i) the certificate described in Section 7.1(c);
- (ii) an assignment of FCC authorizations assigning the FCC Licenses from Seller to Buyer;
- (iii) an assignment and assumption of contracts assigning the Station Contracts from Seller to Buyer;
- (iv) an assignment and assumption of intangible assets assigning the Intangible Assets (if any) from Seller to Buyer;
- (v) a bill of sale conveying the Tangible Personal Property from Seller to Buyer;
- (vi) a copy of the Required Consents;
- (vii) certified resolutions of Seller's Board of Trustees approving the execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated herein, and the delivery of the closing documents provided for hereunder; and
- (viii) any other instruments of conveyance, assignment and transfer that may be reasonably necessary to convey, transfer and assign the Station Assets from Seller to Buyer, free and clear of Liens, except for Permitted Liens.

8.2 Buyer Documents. At Closing, Buyer shall deliver or cause to be delivered to Seller:

- (i) the Purchase Price in accordance with Sections 1.4 (Purchase Price) and 5.2 (Risk of Loss) and 10.6(d) hereof;
- (ii) the certificate described in Section 6.1(c);
- (iii) an assignment and assumption of contracts assuming the Station Contracts;
- (iv) an assignment and assumption of intangible assets assigning the Intangible Assets (if any) from Seller to Buyer;
- (v) a good standing certificate issued by the Secretary of State of Buyer's jurisdiction of formation;
- (vi) certified resolutions of Buyer's Board of Directors approving the execution, delivery, and performance of this Agreement and the consummation of the

transactions contemplated herein, and the delivery of the closing documents provided for hereunder; and

(vii) such other documents and instruments of assumption that may be necessary to assume the Assumed Obligations (as defined in Section 1.3).

ARTICLE 9: SURVIVAL; INDEMNIFICATION

9.1 Survival.

(a) Except as provided by Section 1.5 (Deposit) and Section 10.4 (Liquidated Damages) with respect to Liquidated Damages, the termination of this Agreement shall not relieve any party of liability for any material breach or default under this Agreement prior to the date of termination. Notwithstanding anything contained herein to the contrary, Section 1.5 (Deposit) and Section 11.1 (Expenses) shall survive any termination of this Agreement.

(b) The representations and warranties in this Agreement, made as of the Closing, shall survive for a period of one (1) year from the Closing Date, whereupon they shall expire and be of no further force or effect, except (i) those under Section 2.1 (Organization), Section 2.2 (Authorization), Section 2.5 (Taxes), Section 3.1 (Organization) and Section 3.2 (Authorization) (collectively, the “Fundamental Representations”), all of which shall survive until the expiration of any applicable statute of limitations, and (ii) that if within such applicable period the indemnified party gives the indemnifying party written notice of a claim for breach thereof describing in reasonable detail the nature and basis of such claim, then such claim shall survive until the earlier of resolution of such claim or expiration of the applicable statute of limitations. The covenants and agreements in this Agreement that are to be performed after the Closing shall survive until performed and any other covenants and agreements shall survive for a period of nine (9) months from the Closing Date.

9.2 Indemnification.

(a) From and after Closing, Seller shall defend, indemnify and hold harmless Buyer and its officers, directors, members and employees from and against and in respect of, and reimburse them for, any and all losses, costs, damages, liabilities and expenses, including reasonable attorneys’ fees and expenses (“Damages”) resulting from:

(i) any material breach by Seller of its representations and warranties made under Article 2 of this Agreement; or

(ii) any material breach by Seller of any material obligation under this Agreement; or

(iii) any material breach by Seller of the Retained Obligations (as defined in Section 1.3); or

(iv) the business or operation of the Station before the Effective Time, except for the Assumed Obligations (as defined in Section 1.3); or

(v) any third party claim, demand, lawsuit or action resulting from any material breach or deviation, as applicable, as described in Section 9.2(a)(i)-(iv).

(b) Notwithstanding the foregoing or anything else in the Agreement to the contrary, Seller shall have no liability to Buyer until Buyer's aggregate Damages exceed the sum of Five Thousand Dollars (\$5,000) ("Basket"), after which the amount of the Basket shall be excluded from any calculation of Damages.

(c) From and after Closing, Buyer shall defend, indemnify and hold harmless Seller and its officers, directors, members and employees from and against and in respect of, and reimburse them for, any and all Damages incurred by Seller in connection any claim, demand, lawsuit or action arising out of or resulting from:

(i) any material breach by Buyer of its representations and warranties made under this Agreement; or

(ii) any material breach by Buyer of any material obligation under this Agreement; or

(iii) any material breach by Buyer of the Assumed Obligations (as defined in Section 1.3); or

(iv) the business or operation of the Station after the Effective Time, except for the Retained Obligations; or

(v) any third party claim, demand, lawsuit or action resulting from any material breach, or the business or operation of the Station, as applicable, as described in Section 9.2(c)(i)-(iv).

(d) Notwithstanding the foregoing or anything else in this Agreement to the contrary, Buyer shall have no liability to Seller until Seller's aggregate Damages exceed the Basket, after which the amount of the Basket shall be excluded from any calculation of Damages.

9.3 Indemnification Procedures for Third Party Claims.

(a) The indemnified party shall give prompt written notice to the indemnifying party of any demand, suit, claim or assertion of liability by third parties that is subject to indemnification hereunder (a "Claim"), but a failure to give such notice or delaying such notice shall not affect the indemnified party's rights or the indemnifying party's obligations except to the extent the indemnifying party's ability to remedy, contest, defend or settle with respect to such Claim is thereby prejudiced and provided that such notice is given within the time period described in Section 9.1 (Survival).

(b) The indemnifying party shall have the right to undertake the defense or opposition to such Claim with counsel selected by it. In the event that the indemnifying party does not undertake such defense or opposition in a timely manner, the indemnified party may undertake the defense, opposition, compromise or settlement of such Claim with counsel selected by it and the indemnifying party shall be required to pay for reasonable attorneys' fees and costs

incurred by the indemnified party (subject to the right of the indemnifying party to assume defense of or opposition to such Claim at any time prior to settlement, compromise or final determination thereof).

(c) Anything in this Agreement to the contrary notwithstanding:

(i) the indemnified party shall have the right, at its own cost and expense, to participate in the defense, opposition, compromise or settlement of the Claim;

(ii) the indemnifying party shall not, without the indemnified party's written consent, settle or compromise any Claim or consent to entry of any judgment that does not include the giving by the claimant to the indemnified party a release from all liability in respect of such Claim subject to the limitations herein; and

(iii) in the event that the indemnifying party undertakes defense of or opposition to any Claim, the indemnified party, by counsel or other representative of its own choosing and at its sole cost and expense, shall have the right to consult with the indemnifying party and its counsel concerning such Claim and the indemnifying party and the indemnified party and their respective counsel shall cooperate in good faith with respect to such Claim.

(d) In determining the amount of any Damages hereunder, the amount shall be determined after deducting the amount of any insurance proceeds and other third party recoveries actually received by Seller or Buyer or any of its affiliates in respect thereof (which proceeds and recoveries Seller or Buyer agrees to use, or to cause any such affiliate to use, diligent efforts to obtain) and the amount of any tax benefit related thereto. If an indemnification payment is received by Seller or Buyer, and Seller or Buyer or any of their affiliates later receives insurance proceeds, other third party recoveries, or tax benefits in respect of the related Damages, Seller or Buyer shall promptly pay to the other a sum equal to the lesser of (y) the actual amount of insurance proceeds, other third party recoveries, and tax benefits or (z) the actual amount of the indemnification payment previously paid by the other with respect to such Damages. Seller and Buyer shall use, and shall cause its affiliates to use, commercially reasonable efforts to mitigate the amount of Damages for which it may be entitled to indemnification hereunder.

9.4 Remedies Exclusive.

(a) The remedies provided in this Article 9 and in Article 10 shall be the exclusive remedies of the parties hereto in connection with the transactions contemplated by this Agreement, including without limitation any breach or non-performance of any representation, warranty, covenant, obligation or agreement contained herein. No party (and no affiliate of any party) may commence any suit, action or proceeding against any other party hereto with respect to the subject matter of this Agreement, whether in contract, tort or otherwise, except to enforce such party's express rights pursuant to this Article 9 or Article 10. The provisions of Articles 9 and 10 were specifically bargained for and reflected in the amounts payable to Seller in connection with the transactions contemplated hereby.

(b) Without limiting the foregoing and notwithstanding anything that may be expressed or implied in this Agreement, Seller and Buyer each agree and acknowledge that

their only recourse hereunder is against the other. Without limiting the generality of the foregoing sentence, Seller and Buyer each agree and acknowledge that (a) no recourse shall be had against any past, current or future affiliate, shareholder, director, officer, employee, agent, trustee, board or other governing entity, or attorney of the other (collectively, the “Excluded Persons”), with respect to the subject matter of this Agreement, and (b) neither it nor any of its affiliates shall commence any suit, action or proceeding against any Excluded Person with respect to the subject matter of this Agreement, whether in contract, tort or otherwise.

9.5 Tax Treatment of Indemnity Payments. It is the intention of the parties to treat any indemnity payment made under this Agreement as an adjustment to the purchase price for all purposes, and the parties agree to file their tax returns accordingly.

ARTICLE 10: TERMINATION; SPECIFIC PERFORMANCE; LIMITATION OF LIABILITY

10.1 Termination. Subject to Section 9.1 (Survival), this Agreement may be terminated prior to Closing as follows:

- (a) by mutual written consent of Buyer and Seller;
- (b) by written notice of Buyer to Seller if Seller breaches its representations or warranties or defaults in the performance of its obligations or covenants set forth in this Agreement and such breach or default is material in the context of the transactions contemplated hereby and is not cured within the Cure Period (as defined in Section 10.2);
- (c) by written notice of Seller to Buyer if Buyer breaches its representations or warranties or defaults in the performance of its obligations or covenants set forth in this Agreement and such breach or default is material in the context of the transactions contemplated hereby and is not cured within the Cure Period; provided, however, that the Cure Period shall not apply to Buyer’s obligations to make the Deposit on the date hereof and to pay the Purchase Price at Closing; or
- (d) by written notice of Seller to Buyer or Buyer to Seller, as long as the terminating party is not in breach of any of its representations or warranties or in default in the performance of any of its obligations or covenants set forth in this Agreement, if Closing does not occur by the date twelve (12) months after the date of this Agreement.

10.2 Cure Period. Each party shall give the other party prompt written notice upon learning of any breach or default by the other party under this Agreement. The term “Cure Period” as used herein means a period commencing on the date Buyer or Seller receives from the other written notice of breach or default hereunder and continuing until the earlier of (i) twenty (20) calendar days thereafter or (ii) the Closing Date; provided, however, that if the breach or default is non-monetary and cannot reasonably be cured within such period but can be cured before the Closing Date, and if diligent efforts to cure promptly commence, then the Cure Period shall continue as long as such diligent efforts to cure continue, but not beyond the Closing Date.

10.3 Specific Performance. Notwithstanding Section 9.4(a), in the event of failure or threatened failure by either party to comply with the terms of this Agreement, the other party shall be entitled to an injunction restraining such failure or threatened failure and, subject to obtaining any necessary FCC consent, to enforce this Agreement by a decree of specific

performance requiring compliance with this Agreement. If a party brings an action to enforce specific performance under this Agreement, the other party shall waive the defense that there is an adequate remedy at law and waive any requirement to post a bond or other security.

10.4 Liquidated Damages. If Seller terminates this Agreement pursuant to Section 10.1(c), then Seller shall be entitled to the Deposit and such payment shall constitute liquidated damages and the sole remedy of Seller for a breach by Buyer of this Agreement. The parties acknowledge and agree that payment of such amount shall constitute payment of liquidated damages and is not a penalty and that the liquidated damages amount is reasonable in light of the substantial but indeterminate harm anticipated to be caused by material breach or default under this Agreement, the difficulty of proof of loss and damages, the inconvenience and non-feasibility of otherwise obtaining an adequate remedy, and the value of the transactions to be consummated hereunder. In addition, if Buyer contests Seller's right to the Deposit, then the prevailing party in any action by Seller to enforce its right to the Deposit shall be entitled to payment by the other party of the reasonable attorneys' fees incurred by the prevailing party in such action.

10.5 Limitation of Liability. Notwithstanding anything in this Agreement to the contrary, neither party shall have any liability to the other under any circumstances for special, indirect, consequential, punitive or exemplary damages or similar damages of any kind, including any damages calculated using a "multiplier" or any other similar method, whether or not foreseeable, occasioned by any failure to perform or the breach or default of any representation, covenant, warranty or other obligation under this Agreement, whether based in negligence or otherwise.

10.6 Special Termination Right of Buyer. Subject to Section 9.1 (Survival), in addition to the termination rights set forth in Section 10.1 (Termination), Buyer may terminate this Agreement prior to Closing as set forth in this Section 10.6:

(a) Buyer may terminate this Agreement by written notice to Seller if LocusPoint Networks LLC ("LPN") or any party affiliated with LPN files with the FCC any petition or opposition to the FCC Application or to Seller's or Buyer's qualifications to hold a broadcast license, and as a result of such filing, either (i) FCC Consent is delayed more than six (6) months after the date on which the FCC Application is filed and it is not then reasonably foreseeable that FCC Consent will be obtained within sixty (60) days thereafter or (ii) FCC Consent is delayed more than eight (8) months after the date on which the FCC Application is filed.

(b) Buyer may terminate this Agreement by written notice to Seller if LPN or any party affiliated with LPN initiates any legal or equitable action to oppose, obstruct or delay the sale of the Station Assets by Seller or purchase of the Station Assets by Buyer and thereby obtains an order from a court of competent jurisdiction that is legally binding on one or both parties to this Agreement that (i) by its terms prevents the Closing; (ii) by its terms imposes conditions on the Closing that either Buyer or Seller are not willing or able to satisfy within ten (10) days after the date on which all other closing conditions set forth in Articles 6 and 7 have been met or waived; or (iii) otherwise delays the Closing for more than eight (8) months after the date on which the FCC Application is filed.

(c) Buyer may terminate this Agreement by written notice to Seller if Buyer is for any reason made a party to any legal or equitable action by LPN or Seller arising out of the dispute between LPN and Seller that is the subject of the litigation described in Schedule 2.10.

(d) In the event that Buyer forebears from exercising its rights to terminate under Section 10.6(a)-(c), and Buyer deems it necessary or advisable to incur legal costs and other related expenses in connection with responding to or defending against any claims or assertions relating to Buyer, then the Purchase Price shall be reduced by such costs and expenses reasonably incurred by Buyer prior to Closing; provided, that Buyer shall notify Seller of such expenses as they are incurred (i.e, within ten (10) days of receiving each invoice). Notwithstanding the immediately foregoing sentence, at any time after such expenses incurred by Buyer exceed Seventy-Five Thousand Dollars (\$75,000.00) in the aggregate, Seller shall have the right to reimburse such expenses to Buyer and terminate this Agreement without further liability to Buyer by giving Buyer ten (10) days' notice of its intent to do so; unless Buyer gives notice to Seller within such 10-day notice period that it agrees to pay such expenses in excess of \$75,000 going forward.

ARTICLE 11: MISCELLANEOUS

11.1 Expenses. Each party shall be solely responsible for all costs and expenses incurred by it in connection with the negotiation, preparation and performance of and compliance with the terms of this Agreement. Transfer or sales or use taxes, fees and charges applicable to the transfer of the Station Assets under this Agreement, if any, shall be paid one-half by Buyer and one-half by Seller. Each party is responsible for any commission, brokerage fee, advisory fee or other similar payment that arises as a result of any agreement or action of it or any party acting on its behalf in connection with this Agreement or the transactions contemplated hereby.

11.2 Further Assurances. After Closing, each party shall from time to time, at the request of and without further cost or expense to the other, execute and deliver such other instruments of conveyance and assumption and take such other actions as may reasonably be requested in order to more effectively consummate the transactions contemplated hereby.

11.3 Assignment. Neither party may assign all or part of this Agreement without the prior written consent of the other party hereto. The terms of this Agreement shall bind and inure to the benefit of the parties' respective successors and any permitted assigns, and no assignment shall relieve any party of any obligation or liability under this Agreement.

11.4 Notices. Any notice pursuant to this Agreement shall be in writing and shall be deemed delivered on the date of personal delivery or confirmed facsimile transmission or confirmed delivery by a nationally recognized overnight courier service, and shall be addressed as follows (or to such other address as any party may request by written notice):

To Seller: San Mateo Community College District
3401 CSM Drive
San Mateo, California 94402
Attn: Executive Vice Chancellor

with copies to: Kathy Blackwood
San Mateo County Community College District
3401 CSM Drive
San Mateo, California 94402

and Pillsbury Winthrop
1200 – 17th St. SW
Washington, DC 20036
Attn: John Hane

To Buyer: Rural California Broadcasting Corporation
5850 Labath Avenue
Rohnert Park, CA 94928
Attn: Nancy Dobbs, President and CEO

with copy to: Gray Miller Persh LLP
1200 New Hampshire Avenue NW, Suite-410
Washington, DC 20036
Attn: Todd D. Gray

11.5 Amendments. No amendment or waiver of compliance with any provision 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 such amendment, waiver, or consent is sought.

11.6 Entire Agreement. This Agreement (including the Schedules hereto) constitutes the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and understandings with respect to the subject matter hereof. No party makes any representation or warranty with respect to the transactions contemplated by this Agreement except as expressly set forth in this Agreement and each party hereby confirms that it has not relied upon any representations or statements, whether written or oral, except those representations and warranties set forth in Article 2 and 3 of this Agreement.

11.7 Severability. If any court or governmental authority holds any provision in this Agreement invalid, illegal or unenforceable under any applicable law, then, so long as no party is deprived of the benefits of this Agreement in any material respect, 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.

11.8 No Beneficiaries. Nothing in this Agreement expressed or implied is intended or shall be construed to give any rights to any person or entity other than the parties hereto and their successors and permitted assigns.

11.9 Governing Law and Venue. The construction and performance of this Agreement shall be governed by the laws of the State of California without giving effect to the

choice of law provisions thereof. Any action to enforce the terms of this Agreement shall be brought in the courts of the State of California with venue lying in the County of San Mateo.

11.10 Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement and the other agreements, documents and instruments contemplated herein, all provisions shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authoring any of the provisions.

11.11 Counterparts. This Agreement may be executed in separate counterparts, each of which will be deemed an original and all of which together will constitute one and the same agreement.

[SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT

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

**San Mateo County Community
College District**

**Rural California Broadcasting
Corporation**

By: _____

By: _____

Printed: _____

Printed: _____

Title: _____

Title: _____

List of Schedules

- 1.1(a) – FCC Licenses
- 1.1(b) – Tangible Personal Property
- 1.1(c) – Station Contracts
- 1.2(l) – Other Excluded Assets
- 1.6 – Repacking Expenses
- 1.7 – Additional Consideration
- 2.10 – Seller Litigation

Schedule 1.1(a)

FCC Licenses, Applications, and Authorizations

1. Television broadcast station license (FCC file no. BLEDT-20091124AHY).
2. License renewal authorization (FCC file no. BREDT-20140721AEJ; expires 12/1/2022).
3. *Construction permit authorizing minor modification of BLEDT-20091124AHY to specify operation on Channel 27 (FCC File No. 0000028093).
4. Television broadcast station auxiliary antenna license (FCC file no. BXLEDT-20120621AAB).
5. Earth Station license E040364 (FCC file no. SES-REG-20040909-01357; expires 9/9/2019).
6. FCC Form 399, Incentive Auction Relocation Reimbursement (file number 0000028092), filed July 11, 2017, and pending with the FCC.

*Pursuant to the FCC's process of "repacking" television broadcast stations, Seller has been assigned to Transition Phase 8, and is required to complete construction and testing of Station's authorized Channel 27 facilities on or before **January 18, 2020**. The Station must discontinue operations on its pre-auction channel on or before **March 13, 2020** (together, the "Repacking Deadlines"). See FCC Public Notice "Incentive Auction Closing and Channel Reassignment Public Notice", DA 17-314 (released April 13, 2017). **NOTWITHSTANDING ANYTHING IN THE AGREEMENT OR THE SCHEDULES THERETO TO THE CONTRARY, SELLER MAKES NO REPRESENTATION OR WARRANTY REGARDING THE FEASIBILITY OR ABILITY OF SELLER OR BUYER TO MEET THE FCC'S REPACKING DEADLINES.**

Schedule 1.1(b)

Tangible Personal Property

Property subject to Liens identified with a diamond (◆).

Mt. Sutro Transmitter Site Equipment

TRANSMITTER EQUIPMENT			
<u>TRANSMITTER LOCAL NAME</u>	<u>MANUFACTURER</u>	<u>MODEL</u>	<u>STATUS</u>
DTV ANTENNA SYSTEM			ACTIVE
43 WAVEGUIDE COMBINER	DIELECTRIC		ACTIVE
HARRIS DTV TV XMTR	HARRIS	DHD90P4	ACTIVE
MISCELLANEOUS SUTRO SITE EQUIPMENT	MISCELLANEOUS		

Other Tangible Personal Property

MASTER CONTROL EQUIPMENT			
<u>MCR LOCAL NAME</u>	<u>MANUFACTURER</u>	<u>MODEL</u>	<u>STATUS</u>
AES PATCH BAY	ADC	DAB407-4MKII	Active
SDI/HD PATCH BAY	ADC	PPI2226RS-SVJT-BK	Active
AJA-1 FRAME SYNC	AJA VIDEO SYSTEMS	FS-1	Active
AJA-2 FRAME SYNC	AJA VIDEO SYSTEMS	FS-1	Active
SUNDANCE AUTOMATION	AVID	Titan	Active
KVM #1	AVOCENT	AMX 5130	Active
KVM #10	AVOCENT	AMX 5130	Active
KVM #2	AVOCENT	AMX 5130	Active
KVM #3	AVOCENT	AMX 5130	Active
KVM #4	AVOCENT	AMX 5130	Active
KVM #5	AVOCENT	AMX 5130	Active
KVM #6	AVOCENT	AMX 5130	Active
KVM #7	AVOCENT	AMX 5130	Active
KVM #8	AVOCENT	AMX 5130	Active

KVM #9	AVOCENT	AMX 5130	Active
KVM BASE STATION	AVOCENT	AMX 5010	Active
EVERTZ HD KEYER	EVERTZ	HD9625LGA-EAS Plus BP	Active
EVERTZ KEYER #1	EVERTZ	9625LGA Plus EAS	Active
EVERTZ KEYER #2	EVERTZ	9625LGA	Active
EVERTZ KEYER #3	EVERTZ	9625LGA Plus EAS	Active
EVERTZ KEYER #4	EVERTZ	9625LGA Plus EAS	Active
MONITOR WALL ENGINE - MC	EVERTZ	MVP	Active
DPS1 SYNCHRONIZER/TBC	LEITCH	DPS 575	Active
DPS2 SYNCHRONIZER/TBC	LEITCH	DPS 575	Active
MASSLOGGER	MASSTECH	ML-350-015	out of service
20 RACKS AND 30KFT WIRING	MIDDLE ATLANTIC / BELDEN		Active
MEDIAPORT 4CH 1	OMNEON	MIP-5322	Active
MEDIAPORT 4CH 2	OMNEON	MIP-5322	Active
MULTIPORT 1	OMNEON	PR-MIP-5501	Active
MULTIPORT 2	OMNEON	PR-MIP-5501	Active
OMNEON CONTROL SERVER	OMNEON	NCM 2003	Active
PROBROWSE PROXY GEN 1	OMNEON	MPB-1002-G	inactive
PROBROWSE PROXY GEN 2	OMNEON	MPB-1002-G	inactive
PROBROWSE SERVER	OMNEON	MPB-1001-HC	inactive
DVC PRO VCR 4	PANASONIC	AJ-SD930	Active
DVC PRO VCR 8	PANASONIC	AJ-SD930	Active
DVC PRO VCR	PANASONIC	SD255	inactive
DVC PRO VCR	PANASONIC	SD255	inactive
DVC PRO VCR	PANASONIC	SD255	inactive
XD CAM VCR	SONY	PDWHD1500	Active
HD CAM VCR	SONY	HDW-1800	Active
DIGIBETA VCR	SONY	DVW-M2006	Active
MULIT MONITOR (MANY)	WOHLER/MARSH ALL		Active
RACK MT	PANASONIC		Active

MONITORS(3)			
19" MONITORS (MANY)	SAMSUNG		Active
DEKOCAST C	PINNACLE	DEKOCAST	Active
DVD RECORDER	PIONEER	PRV-LX1	inactive
SENCORE ATLAS IRD	SENCORE	MRD 3187A	Active
SENCORE ATLAS IRD	SENCORE	MRD 3187A	Active
SENCORE ATLAS IRD	SENCORE	MRD 3187A	Active
IRD A	THOMSON	RX8200	Active
IRD B	THOMSON	RX8200	Active
IRD C	THOMSON	RX8200	Active
IRD D	THOMSON	RX8200	Active
IRD E	THOMSON	RX8200	Active
IRD F	THOMSON	RX8200	Active
SYNCRONIZER	SNELL & WILCOX	TBS 180AV	Active
DIGI BETA	SONY	DVWM2000	Active
QC2 MONITOR	SONY	BVM-D20F1U	Active
QC3 MONITOR	SONY	BVM-D20F1U	inactive
MULTIPLEXER (2)	TANDBERG	M2/MUXMX5 620	Active
SD ASI RECEIVER #1	TANDBERG	TT1260/DIRB AS	Active
SD ASI RECEIVER #2	TANDBERG	TT1260/DIRB AS	Active
SD ASI RECEIVER #3	TANDBERG	TT1260/DIRB AS	Active
SD ENCODER #1	TANDBERG	M2/ENC/E571 0/ATSC	Active
SD ENCODER #2	TANDBERG	M2/ENC/E571 0/ATSC	Active
SD ENCODER #3	TANDBERG	M2/ENC/E571 0/ATSC	Active
SD ENCODER #4	TANDBERG	M2/ENC/E571 0/ATSC	Active
JUPITER CONTROL SYSTEM	THOMSON	Jupiter	inactive
ROUTER CNTRL PANELS(4)	THOMSON	Various	Active
SI-1	THOMSON	SI-3000C	Active
SI-2	THOMSON	SI-3000C	Active
TRINIX ROUTER	THOMSON	Trinix DV33128	Active
VENUS ROUTER	THOMSON	Venus	Active

VM-1	THOMSON	VM-3000C	Active
QC1 AUDIO	WOHLER	AMP1-DA	Active
QC2 AUDIO	WOHLER	AMP1-DA	Active
WAVEFORM MONITOR	TEKTRONIX	7120	Active
WAVEFORM RASTERIZER	TEKTRONIX	7020	Active
<u>PRODUCTION LOCAL NAME</u>	<u>MANUFACTURER</u>	<u>MODEL</u>	<u>STATUS</u>
BATTERY BELT #1	ANTON BAUER	30/13	ACTIVE
BATTERY BELT #2	ANTON BAUER	30/13	ACTIVE
DIONIC 90 #3	ANTON BAUER	Dionic 90	out of service
DIONIC 90 #4	ANTON BAUER	Dionic 90	out of service
DIONIC 90 #5	ANTON BAUER	Dionic 90	out of service
DIONIC 90 #6	ANTON BAUER	Dionic 90	out of service
QUAD 2702 POWERCHARGER	ANTON BAUER	Quad 2702	out of service
JOKER NEWS COMBO KIT	K5600	K0200/400JBN DOUB+3	ACTIVE
FIELD MIXER	SHURE	FP32A	ACTIVE
FIELD MIXER	SHURE	M67	INACTI VE
FIELD MONITOR	SONY	PVM-8041Q	ACTIVE
Aspect ratio converter	Picolink		Active
XDCAMHD CAMCORDER	SONY	PDWF-335L	ACTIVE
FIELD CAMERA ZOOM CONTROL	CANON	ZSG-200M	ACTIVE
XDCAM WIDE ANGLE LENS	CANON	KH10EX3.6B IRSE	ACTIVE
XDCAM ZOOM LENS	CANON	KH21EX5.7 IRSE SX12	ACTIVE
TRIPOD SYSTEM	Vinten	Vision 10	ACTIVE
TRIPOD SYSTEM (matte box)	O'CONNOR	50	ACTIVE
MATTE BOX	VOCAS	MB-325	ACTIVE
Lavalier Microphone	Sony	ECM- 66	Active
Lavalier Microphone	Sony	ECM- 66	Active
XDCAM HD DISC DRIVE	SONY	PDW-U1	Active

XDCAM HD DISC DRIVE	SONY	PDW-U1	Active
------------------------	------	--------	--------

Schedule 1.1(c)

Station Contracts

- ◆ Transmitter site lease between Sutro Tower, Inc. and San Mateo County Community College District dated January 16, 2003, as amended May 22, 2014, extended term through February 28, 2020 ("Sutro Lease").
- ◆ Repacking services agreement, Sutro Tower, Inc. and San Mateo County Community College District dated July 31, 2017, term concurrent with Sutro Lease.

- ◆ *Designates Station Contract requiring third party consent.*

Schedule 1.2(l)

Other Excluded Assets

The Rejected Personal Property.

Schedule 1.6
Unreimbursed Repacking Expenses

None.

Schedule 1.7

Additional Consideration

- 1. Television and Radio Announcements.** Beginning on the date of Closing and ending on the date five (5) years thereafter, Buyer shall make available to Seller, at no cost to Seller, on-air underwriting announcement spots of up to thirty (30) seconds in length on KRCB TV 22 and on KRCB FM RADIO 91. Each month Buyer shall produce one (1) announcement for Seller, based on copy provided by Seller, to describe to the Buyer's broadcast area (including but not limited to the San Francisco North Bay Region), its activities and initiatives for the benefit of Seller's alumni, prospective students and parents (the "Messages"). In the alternative, Seller may provide pre-produced announcement to Buyer in a manner and format reasonably acceptable to Buyer. Seller shall be responsible for scheduling the Messages with Buyer on a monthly use-it-or-lose-it basis, and for providing the copy or pre-produced announcements to Buyer at least fourteen (14) days prior to Seller's first desired broadcast date. Buyer will schedule five (5) monthly spot placements on KRCB TV 22 and ten (10) monthly spot placements on KRCB FM RADIO 91. Buyer shall run all Messages between the hours of 6 am and midnight local time on a run-of-schedule basis with approximately equal distribution across dayparts. Should Seller not elect to utilize any Messages by the end of any month, such unused Messages shall be forfeited and may not be carried forward to future months (and any order that is not timely placed by Seller shall be deemed used). Buyer will provide to Seller each month a written summary of when (date and time) the Messages aired on KRCB TV 22 and on KRCB FM RADIO 91 in the previous month, provided that Seller informs Buyer to whom and where this "proof-of-performance" documentation should be sent. The Messages shall conform to the regulations and policies applicable to noncommercial educational broadcasting, including public TV and radio industry standards, and Buyer shall have the right to preempt or reject any Message(s) and otherwise maintain control over the programming of the stations in order to comply with applicable laws (including without limitation FCC rules and regulations) and Buyer's standards and practices, which Buyer shall apply to the Messages on a uniform and non-discriminatory basis as compared to all other underwriting announcements broadcast by each respective station. Buyer shall make-good any preempted or rejected Messages subject to Seller timely providing make-good copy or pre-produced announcements. Notwithstanding anything in the Agreement or in this Schedule 1.7, Seller has no obligation make use of the Messages.
- 2. Student Internships.** At the beginning of the first semester (of Seller's student campuses) following the date of Closing, or another date mutually agreed upon by the parties, until three (3) years thereafter, pursuant to an appropriate internship site agreement between Seller and Buyer with provisions that are customary for community college student internships (but excluding any payments from Seller to Buyer), Buyer shall work with Seller to provide training, in the form of educational internships, at Buyer's studio and office location for up to six of Seller's students per

year (three (3) students per semester) working in Buyer's marketing, development, production, telecommunications, and social media departments. The objective of the training and educational internship program is to provide Seller's students with applicable working experiences that allow the Seller's students to learn and gain onsite training from Buyer's staff. Buyer and Seller agree to cooperate during the three (3) year period in designing and implementing the actual educational internship program. Buyer and Seller will mutually agree on the number of hours the students will work on a weekly basis and the number of weeks per year that the training and educational internship will be offered. Transportation to and from Buyer's studio and office location is the responsibility of the individual students and/or the Seller's educational program. Each year Buyer and Seller will review and evaluate the established educational internship program to consider whether operational and content modifications are necessary and appropriate. The educational internships training shall be unpaid, unless the nature and scope of the responsibilities performed is appropriate for paid services, as determined by Buyer in its reasonable good-faith discretion, in which case Buyer shall make payment for such services. In the first year of the student training pursuant to this Agreement, Buyer and Seller will make reasonable efforts to establish and be operational with the training and educational internship program on or before six (6) weeks prior to the commencement of the first semester. Notwithstanding anything in the Agreement or in this Schedule 1.7, Seller shall have no obligation to make use of the student internships.

3. **Carriage of KCSM(FM) video channel via TV Digital Broadcast.** Beginning at the Closing, and for five (5) years thereafter, Buyer will maintain carriage of the KCSM(FM) video channel as broadcast on the Station as of the Effective Date (the "KCSM(FM) Stream"). Carriage of the KCSM(FM) Stream shall in all cases be consistent with FCC requirements for noncommercial educational stations and Sections 73.503 and 73.621 of the FCC rules. Buyer's retransmission of the KCSM(FM) Stream will include the slide show featuring the Jazz Datebook, community events and Jazz Trivia substantially as they are carried as of the Effective Date, provided that Seller continues to produce and furnish such features to Buyer. Seller shall be responsible for providing the KCSM(FM) Stream to Buyer via a technological solution in an ASI encoded format that the Buyer, in its reasonable discretion, deems appropriate for integration into the Station's multi-channel digital stream. Seller shall be solely responsible for the costs of production and encoding of the KCSM(FM) Stream, for the costs of providing the KCSM(FM) Stream to Buyer, and for the content of the KCSM(FM) Stream, and shall obtain and maintain commercially reasonable media perils insurance for Buyer's broadcast of the KCSM(FM) Stream with such insurance including Buyer as an additional named insured. Buyer, at its sole discretion, shall have the exclusive right to preempt or reject any specific programming of the KCSM(FM) Stream if Buyer, in its reasonable judgment, concludes that such programming does not serve the public interest, or that alternate programming or alternative program scheduling, would better address local needs. As between the parties, all right, title and interest in and to the KCSM(FM) Stream, and the right to authorize the use of the KCSM(FM) Stream in any manner and in any media whatsoever, shall be and remain vested at all times solely in Seller.

Seller shall secure, at its sole cost and expense, any rights licenses that might be necessary for the transmission of the KCSM(FM) Stream over the Station.

Notwithstanding anything in the Agreement or in this Schedule 1.7, Seller shall have no obligation to continue providing the KCSM(FM) Stream to Buyer and Seller does not grant any rights to Buyer with respect to the KCSM(FM) Stream.

4. **Local Programs.** Each month during the five (5) year period immediately following Closing, Buyer will broadcast on its primary (.1 or equivalent) channel up to thirty (30) minutes per month of Seller-produced video programming (each, a "Local Program") in a timeslot of Buyer's choice in pre-prime or on weekends. Seller will give notice of its intent to provide a Local Program and its total run time at least two (2) months in advance of the calendar month in which it intends to provide such Local Program (e.g., Seller will give notice no later than September 30 with respect to Local Program to air in December). Each Local Program must be delivered to Buyer no later than one (1) month in advance of the calendar month in which Seller wishes the Local Program to air. Local Programs must adhere to FCC requirements for non-commercial stations, comply with Buyer's reasonable technical standards, and be delivered by Seller to Buyer in a mutually agreeable manner. Buyer, at its sole discretion, shall have the right to preempt or reject any Local Program provided by Seller if Buyer, in its reasonable judgment, concludes that such Local Program does not serve the public interest, or that alternate programming would better address local needs. Notwithstanding anything in the Agreement or in this Schedule 1.7, Seller shall have no obligation to provide any Local Program or to make use of the rights granted to Buyer herein.

Schedule 2.10

Seller Litigation

Seller has sued LocusPoint Networks, LLC, LocusPoint II KCSM, LLC and PricewaterhouseCoopers Advisory Services LLC, and LocusPoint Networks, LLC and LocusPoint II KCSM, LLC have sued Seller, in Superior Court of the State of California, County of San Mateo, in each case raising claims arising out of a series of agreements between LocusPoint Networks, LLC and Seller regarding a potential sale of Station in the FCC's broadcast incentive auction. *See San Mateo County Community College District, et al vs. LocusPoint Networks, LLC, ET. AL.*, 17-CIV-01534; *LocusPoint Networks, LLC, et al vs. San Mateo County Community College District*, 17-CIV-01550. LocusPoint Networks, LLC has asserted to Seller that it believes those same agreements give LocusPoint Networks, LLC the right to block the sale of Station at this time. Seller disputes LocusPoint Networks, LLC's assertions for a number of reasons, including without limitation that LocusPoint Networks, LLC materially breached the agreements such that the provisions LocusPoint Networks, LLC has stated it relies upon for its assertions no longer bind Seller, and because any security interest LocusPoint Networks, LLC may hold is limited to the proceeds of the sale of certain assets used in the operation of the Station and does not extend to the assets themselves.



McGOVERN ESCROW SERVICES

22 Battery Street, Suite 914, San Francisco, CA. 94111
Telephone: 415.735.3645 * Facsimile: 415.358.5732

This Escrow Company holds California Department of Business Oversight Escrow License No. 9635091

Escrow No. 100895

ESCROW INSTRUCTION AND AGREEMENT

This Escrow Instruction and Agreement ("Instruction") dated September __, 2017, shall not be binding on McGovern Escrow Services, Inc. ("Escrow Agent") until acknowledged and executed by all persons identified as principals herein.

This Agreement is entered into by and between SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT, a California Community College District ("Seller"), RURAL CALIFORNIA BROADCASTING CORPORATION, a California non-profit and nonstock corporation ("Buyer"), and the Escrow Agent. Seller and Buyer are sometimes referred to collectively as the "Parties, and each individually is a "Party".

WHEREAS, Seller and Buyer have entered into an Asset Purchase Agreement dated September __, 2017 the ("Agreement").

WHEREAS, under the terms of the Agreement the Seller desires to sell and assign to Buyer, and Buyer wishes to buy and take assignment of, certain assets of Seller and the FCC Licenses of that certain noncommercial educational television station known as KSCM-TV (the "Station"), under terms and conditions set forth in the Agreement.

WHEREAS, under the terms of the Agreement Buyer shall make a cash deposit, in immediately available funds, in the amount of Nine Hundred Sixty Thousand and No/100US (\$960,000.00).

NOW, THEREFORE, the Parties desire to establish an escrow account in which \$960,000.00 (the "Escrow Funds") will be deposited hereto by Buyer.

1. Deposit of Funds

On or before September __, 2017 (the "Closing Date"), Buyer shall cause to be deposited hereto the Escrow Funds.

The Escrow Funds are to be deposited in the form of a wire transfer payable to McGovern Escrow Services, Inc., Escrow No. 100895.

- a. Upon receipt of the Escrow Funds that have been deemed collected, the Escrow Agent is instructed to invest the Escrow Funds in one or more federally insured, interest bearing account. All interest accrued on the Escrow Funds shall be credited to Rural California Broadcasting Corporation for taxation purposes and reported as such.

- b. Concurrent with the execution of this Escrow Agreement, Buyer shall deliver to escrow:
 - i. A copy of the Certificate of Incorporation as filed with the California Secretary of State, and a Resolution designating signing authority for the corporation.
 - ii. Customer Identification form from the officers and/or any other signing authority of Buyer as required for bank interest bearing account purposes.
 - iii. IRS form W-9, Request for Taxpayer Identification Number and Certification from Rural California Broadcasting Corporation.

2. Disbursement of Funds

On or before three (3) business days prior to the Closing as defined in the Agreement, or three (3) business days prior to any other disbursement of Escrow Funds, Seller and Buyer shall submit to escrow mutual written instruction as to:

- a. Any and all prorations and adjustments to be made between the Parties, and
- b. The disbursement of the Escrow Funds to Seller and the accrued interest to Buyer, or
- c. Any other disbursement of the Escrow Funds as contemplated in the Agreement.

3. Obligation to Disburse

Notwithstanding any provision to the contrary herein (or in the General Provisions attached), Escrow Agent shall effect the delivery and disbursement of the Escrow Property as set out in Section 2. within three (3) business days of receipt of the required authorization and instruction from the Parties.

4. Duties of Escrow Agent

Escrow Agent will not be liable for actions or omissions hereunder, except for its own gross negligence, bad faith or willful misconduct and, except with respect to claims based upon such gross negligence, bad faith or willful misconduct, such actions or omissions as are successfully asserted against Escrow Agent. Buyer and Seller shall jointly and severally indemnify and hold harmless Escrow Agent (and any successor Escrow Agent) from and against any and all losses, liabilities, claims, actions, damages and expenses, including reasonable attorney's fees and disbursements, arising out of and in connection with this Agreement. Without limiting the foregoing, Escrow Agent will in no event be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with any written notice of Buyer delivered to Escrow Agent in accordance with this Agreement. Each of Buyer and Seller hereby releases, waives, discharges and covenants not to sue the Escrow Agent for any action taken or omitted to be taken under this Agreement except to the extent caused by Escrow Agent's gross negligence, bad faith or willful misconduct.

5. Termination of Escrow

- a. The date of termination is upon the distribution of the Escrow Property pursuant to this Agreement; provided, however, in the event any funds remain in the account on the first (1st) anniversary of the date of these escrow instructions and Agreement, these escrow instructions and Agreement shall be renewed on an annual basis until all such funds are disbursed subject to the terms of Section 5.(b) below.

- b. Should Escrow Agent at any time and for any reason desire to be relieved of its obligations as escrow holder hereunder, the Escrow Agent shall give written notice of its desire to be relieved to the Parties. The Parties shall, within (30) days of the receipt of such notice, appoint a successor escrow agent and instruct Escrow Agent to deliver the Escrow Funds hereunder to the successor escrow agent. If Escrow Agent is not notified of the appointment of a successor escrow agent within sixty (60) days of its transmission of notice under this Section, Escrow Agent shall hold the Escrow Funds until: (i) it receives the authorization and instruction described in Section 2; (ii) it receives a court order instructing it to disburse the Escrow Funds; or (iii) it files a suit in interpleader and deposits Escrow Funds with the court.

6. Independent Review

The Parties have made their own determination as to whether the language in this Instruction memorialize their own respective Agreement, are not usurious, and/or come under any consumer protection laws. McGovern Escrow Services, Inc. makes no representations or warranties with respect to the terms and conditions of the Agreement. The Parties further represent and warrant that each has received sufficient information, either through said party's own legal counsel or other sources of said party's own selection, so as to be able to make an intelligent and informed judgment whether to enter into the Agreement, along with this Escrow Instruction and Agreement. Each undersigned party further state that each has read the document(s) in their entirety prior to executing each such document, and that each has executed the documents voluntarily, with competence and capacity to contract and with the knowledge of the terms significance and legal effect of each such document.

7. The Asset Purchase Agreement

This Escrow Instruction is executed for the purpose of enabling the Escrow Agent to complete this transaction, but is in no way intended to modify, amend, supersede or in any way change the Asset Purchase Agreement, dated September __, 2017 and entered into prior to this Escrow Instruction and Agreement. Escrow Agent is not a party to and is not to be concerned with said Agreement or any matters contained therein, and is responsible only for such matters as are specifically set out in these instructions.

8. Invalidity Provision

Should any provision of this Agreement be found invalid, such invalidity shall not in any way affect the remaining provision of this Agreement.

9. Assignment

This Parties hereto shall not assign any of its rights or delegate any of this duties under this Agreement without prior written consent of the other party and any unauthorized assignment or delegation shall be void and of no effect.

10. Notices

All notices, requests, consents and other communications hereunder to any party pursuant to this Note will be deemed to be sufficient if contained in a written instrument delivered personally or mailed by certified or registered mail postage prepaid or sent electronically by confirmed email transmission, addressed as set forth below, or to such other address as may hereinafter be designated in writing by the recipient to the sender pursuant to this Section 10. Any such notice shall be effective (i) when personally delivered, (ii) one (1) business day after it has been deposited with a nationally-recognized overnight courier, duly addressed and postage prepaid, (iii) two (2) business days after it has been deposited in the United States mail, duly addressed and postage prepaid, or (iv) on the business day of confirmed transmission by facsimile or email. Any party may change such party's address for notice by written notice to the other parties pursuant to the provisions of this Section 10.

To Seller:

San Mateo Community College District
3401 CSM Drive
San Mateo, CA 94402
Attn: Executive Vice Chancellor
Email: blackwoodk@smccd.edu

To Buyer:

Rural California Broadcasting Corporation
5850 Labath Avenue
Rohnert Park, CA 94928
Attn: Nancy Dobbs, President and CEO
Email: nancy_dobbs@krcb.org

To McGovern Escrow Services, Inc:

Ms. Elizabeth McGovern
McGovern Escrow Services, Inc.
22 Battery Street, Suite 914
San Francisco, Ca 94111
Email: elizabeth@mcgovernescrow.com

11. Compensation

Funds for the payment of escrow fees and charges shall be exclusively paid by Buyer and Seller as described in the attached Escrow Fee schedule ("Exhibit A").

12. Amendment of Escrow

This Agreement may not be amended except in writing, executed by the Parties and the Escrow Agent. This Agreement may be executed in counterparts, each of which so executed shall be deemed an original, irrespective of the date of execution and delivery, and the counterparts shall constitute one and the same document.

13. Governing Law and Assignment

This Agreement shall be construed in accordance with and governed by the laws of the State of California and shall be binding upon the parties hereto and their respective successors, heirs, personal representatives and permitted assigns; provided, however, that any assignment or transfer by any party of its rights under this Agreement or with respect to the Escrow Funds shall be void as against the Escrow Agent unless (a) written notice thereof shall be given to the Escrow Agent; and (b) the Escrow Agent shall have consented in writing to such assignment or transfer.

14. Court Orders

Escrow Agent is hereby authorized, in its exclusive discretion, to obey and comply with all final and non-appealable writs, orders, judgments or decrees issued by any court or administrative agency affecting any money, documents or other assets or items held by Escrow Agent. Escrow Agent shall not be liable to any of the Parties hereto, their successors, heirs or personal representatives by reason of Escrow Agent's compliance with such writs, orders, judgments or decrees.

15. USA Patriot Act Notice

The Escrow Agent notifies the Parties hereto that pursuant to the requirements of the USA Patriot Act (Title II of Pub. L. 107-56, signed into law October 26, 2001) (the "Act"), the Escrow Agent is required to obtain, verify and record information that identifies the Parties to this Instruction and Agreement, which information includes the name and address of the Parties and other information that will allow Escrow Agent to identify them in accordance with the Act.

EXHIBIT A

Escrow Fee Agreement

In consideration for complying with the Escrow Instruction and Agreement dated September __, 2017, Pacific Retirement Services, Inc. agrees to pay all applicable fees to McGovern Escrow Services, Inc., as detailed below:

\$3,000.00	Escrow Set-Up and Documentation Fee (Due upon execution and delivery of the Escrow Instruction and Agreement)
25.00	Check disbursement fee per instrument
30.00	Wire transfer fee per event
150.00	Account reconciliation reports, as requested
350.00	Annual Maintenance Fee

Agreed and authorized by:

SELLER:
San Mateo County Community College District,
A California Community College District

BUYER:
Rural California Broadcasting Corporation
a California non-profit and nonstock
corporation

Signature: _____

Signature: _____

Date: _____

Date: _____

Signature: _____

Signature: _____

Date: _____

Date: _____

EXHIBIT B

In accordance with this Escrow Instruction and Agreement dated September __, 2017, the names of the persons who are authorized to give written instructions on behalf of each of the Parties hereof, and exemplars of their respective signatures are as follows:

SELLER:

San Mateo County Community College District,
A California Community College District

Signature

Printed Name

Title

Signature

Printed Name

Title

Number of signatures required: _____

BUYER:

Rural California Broadcasting Corporation
a California non-profit and nonstock
corporation

Signature

Printed Name

Title

Signature

Printed Name

Title

Number of signatures required: _____

GENERAL PROVISIONS

1. **DEPOSITS.** All funds received in escrow shall be deposited with other escrow funds in a non-interest bearing general escrow account or accounts of McGovern Escrow Services, unless otherwise instructed in writing.
2. **OTHER AGREEMENTS.** Unless otherwise specifically provided herein in writing, Escrow Agent is not to be required to read, understand, interpret, or be concerned in any manner whatsoever with any conditional sales contract, purchase agreement, lease contract, security agreement, or other agreement, written or oral, of any kind whatsoever, and is not responsible for the delivery of any papers other than described herein. Escrow Agent is not a party to, or bound by any agreement which may be deposited under, evidenced by, or which may arise out of these instructions.
3. **AGENCY RESPONSIBILITIES.** Escrow Agent is to make no examination of the property being transferred herein or of the condition of or the title thereto. Escrow Agent acts as a depository only and is not responsible or liable in any manner whatever for sufficiency, correctness, genuineness or validity of any instrument deposited with it hereunder, or with respect to the form or execution of the same, or the identity, authority, or right of any person executing or depositing the same.
4. **DEFAULTS.** Escrow Agent shall not be required to take or be bound by notice of any default of any person, or take any action with respect to such default involving any expense or liability, unless notice in writing is given to the Escrow Agent at the address set forth above, of such default by the undersigned or any of them, and unless Escrow Agent is indemnified in a manner satisfactory to it against any and all expense and liability.
5. **NOTICES.** Escrow Agent shall be protected acting upon any notice, request, waiver, consent, receipt or other paper or document reasonably believed by Escrow Agent to be signed by the property party or parties.
6. **JUDGMENT.** Escrow Agent shall not be liable for any error of judgment or for any act done or step taken or omitted by it in good faith or for any mistake or fact of law, or for anything which it may do or refrain from doing in connection herewith, except its own gross negligence or willful misconduct, and Escrow Agent shall have no duties to anyone except those signing these instructions.
7. **COUNSEL.** Escrow Agent may advise with legal counsel of its choice in the event of any dispute or question as to the construction of these instructions, or Escrow Agent's duties hereunder and Escrow Agent shall incur no liability and shall be fully protected in acting in accordance with the opinion and instructions of its counsel. Further, the parties hereto shall reimburse Escrow Agent for the costs, expenses and attorney's fees incurred by Escrow Agent for such advice and counsel. Escrow Agent is hereby authorized to deduct Seller and Buyer portion of such costs, expenses and attorneys fees from any funds held in escrow.
8. **DISAGREEMENTS.** In the event of any disagreement between the undersigned or any of them, and/or the persons named in these instructions, and/or any other person, resulting in adverse claims and demands being made in connection with or for any papers, money or property involved herein or affected hereby, Escrow Agent shall be entitled at its option to refuse to comply with any such claim or demand, as long as such disagreements shall continue, and in so doing Escrow Agent shall not be or become liable for damages or interest to the undersigned or any of them or to any person for its failure or refusal to comply with such conflicting or adverse demands, and Escrow Agent shall be entitled to continue to refrain and refuse to act until:
 - a.
 1. The rights of the adverse claimant had been finally adjudicated in a court assuming and having jurisdiction of the parties and the money, papers and property involved herein or affected hereby and/or
 2. All differences shall have been adjusted by agreement and Escrow Agent shall have been notified thereof in writing signed by all of the persons interested.
 - b. Notwithstanding the foregoing, however, in the event of any such disagreement, Escrow Agent in its sole discretion may (a) file a suit in interpleader for the purpose of having the respective rights of the claimants adjudicated, and then deposit with the court all documents and property held hereunder, and the Parties agree to pay all costs and expenses incurred by Escrow Agent in such action, including attorneys fees, and such costs and expenses shall be included in the judgment in any such action or

(b) submit the matter to the American Arbitration Association, who will name a single arbitrator to conduct an arbitration in San Francisco, California to determine the respective rights of claimants in accordance with the Commercial Arbitration Rules of the American Arbitration Association. All costs and expenses, including attorney's fees incurred with respect to the arbitration by Escrow Agent shall be paid by the Parties in equal proportions. The arbitration award shall be final and without appeal. A judgment upon the award may be entered in any court having jurisdiction of the parties.

9. **INDEMNITY.** In consideration of acceptance of this appointment by Escrow Agent, the Parties agree to defend, indemnify and hold Escrow Agent harmless as to any liability incurred by Escrow Agent to any person, firm or corporation by reason of its having accepted same or in carrying out any of the terms hereof, and to reimburse Escrow Agent for all its expenses, including among other things, counsel fees and court costs incurred by reason of its position or actions taken pursuant to these Escrow Instructions. Subject to Section 4 of the Agreement, the Principals hereby agree that the Escrow Agent shall not be liable to any of them for any action taken by Escrow Agent pursuant to and authorized by the terms hereof.
10. **COURT ORDERS.** Escrow Agent is hereby authorized in its exclusive discretion, to obey and comply with all writs, orders, judgments or decrees issued by any court or administrative agency affecting any money, documents or other securities or writings held by Escrow Agent. Escrow Agent shall not be liable to any of the parties hereto, their successors, heirs or personal representatives, by reason of Escrow Agent's compliance with such writs, orders, judgments or decrees. Notwithstanding such writ, order, judgment or decree is later reversed, modified, set aside or vacated.
11. **USURY.** Escrow Agent is not to be concerned with any question or usury in the processing of this escrow and Escrow Agent is hereby released of any responsibility or liability therefore.
12. **AMENDMENTS TO ESCROW INSTRUCTIONS.** These instructions shall not be subject to rescission or modification except by receipt by Escrow Agent at the address above of written instructions signed by all of the parties hereto or their successors in interest and no such modification shall be effective unless and until consented to in writing by Escrow Agent.
13. **SIGNATURES.** These instructions may be executed in counterparts, each of which so executed shall be deemed as an original, irrespective of the date of its execution and delivery; and such counterparts together with shall constitute one and the same instrument.
14. **COMPLETE AGREEMENT.** These instructions constitute the complete agreement between the Parties and Escrow Agent, with respect to the subject matters referred to in these instructions. These instructions supersede all prior contemporaneous negotiations, promises, covenants, agreements and representations of every nature whatsoever with respect to the subject matters referred to in these instructions, all of which have become merged and finally integrated into these instructions. Each of the parties understands that in the event of any subsequent litigation, controversy or dispute concerning any of the terms, conditions or provisions of these instructions, no party shall be permitted to offer or to introduce any oral evidence concerning any oral promises, agreements, representations or statements relating to the subject matters of these instructions not set forth herein in writing.
15. **SEVERABILITY.** In case any provision in these instructions shall be invalid, illegal or unenforceable, such provision shall be severable from the remained of these instructions, and the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
16. **APPLICABLE LAW.** These instructions and the rights and obligations of the parties thereto shall be governed by the laws of the State of California.

- 17. **SURVIVAL OF REPRESENTATION.** All representations and warranties set forth herein shall survive the closing of escrow.
- 18. **BINDING OF SUCCESSORS.** The parties intend that these instructions will be binding upon and for the benefit of the parties hereto and their respective successors and assigns.

The Parties each hereby state that they have read the foregoing Escrow Instruction and Agreement, understand and agree to it, and acknowledge receipt of a copy of it.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of this ____ day of September, 2017.

SELLER:
San Mateo County Community College District
A California Community College District

BUYER:
Rural California Broadcasting Corporation
a Ca non-profit and nonstock corporation

Signature: _____

Signature: _____

Date: _____

Date: _____

McGovern Escrow Services, Inc. a California corporation

By: _____
Elizabeth McGovern, President

EXHIBIT J

*Execution Version*ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "Agreement"), effective as of September 29, 2017 (the "Effective Date"), is entered into between **SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT**, a California Community College District ("Seller"), and **RURAL CALIFORNIA BROADCASTING CORPORATION**, a California non-profit and nonstock corporation ("Buyer").

Recitals

A. Seller is the licensee of and operates noncommercial educational television Station KCSM-TV, San Mateo, California (the "Station"), pursuant to a license issued by the Federal Communications Commission (the "FCC").

B. Seller desires to sell and assign to Buyer, and Buyer wishes to buy and take assignment of, certain assets of Seller and the FCC Licenses as set forth herein on the terms and subject to the conditions hereinafter set forth, subject to the prior approval of the FCC.

In consideration of the foregoing and the mutual promises contained herein, Buyer and Seller, intending to be legally bound, hereby agree as follows:

AgreementARTICLE 1: PURCHASE OF ASSETS

1.1 Station Assets. On the terms and subject to the conditions hereof, at Closing (as defined in Section 1.8), Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase and acquire from Seller, all right, title and interest of Seller in and to the assets owned and held by Seller and described in this Section 1.1 (collectively, the "Station Assets"). The Station Assets consist of:

- (a) all transferable FCC licenses, permits and other authorizations with respect to the Station (the "FCC Licenses"), which are listed on *Schedule 1.1(a)*, including any renewals or modifications thereof between the date hereof and Closing;
- (b) the equipment, transmitters, and other tangible personal property that are used or held for use in the operation of the Station and listed on *Schedule 1.1(b)*, except for (i) any retirements or dispositions thereof made between the date hereof and Closing in the ordinary course of business in accordance with Section 4.1(c) hereof and (ii) the Rejected Personal Property (as defined in Section 2.6) (the "Tangible Personal Property");
- (c) the contracts, agreements and leases that are used in the operation of the Station and listed on *Schedule 1.1(c)*, and all other such contracts, agreements and leases entered into between the date hereof and Closing subject to the limitations set forth in Section 4.1(f) (the "Station Contracts"); and
- (d) all files, documents and records exclusively relating to the Station Assets or required by the FCC to be kept by the Station, including the Station's local public

Execution Version

files, engineering data and logs, Form 399 filed with the FCC specifying estimated expenses related to Repacking (as defined in Section 1.6) and all Attachments thereto, together with all quotations, studies and correspondence relating to the KCSM repack plan, but excluding records included in or related to Excluded Assets (as defined in Section 1.2).

The Station Assets shall be transferred to Buyer free and clear of liens, claims and encumbrances ("Liens"), except for Assumed Obligations (defined in Section 1.3), liens that will be released at or prior to Closing, liens listed on *Schedule 1.1(c)* hereto, and such other liens, claims, restrictions, and other exceptions that do not in any material respect detract from the value of the property subject thereto or impair the use thereof in the ordinary course of the business of the Station (collectively, "Permitted Liens").

1.2 Excluded Assets. Notwithstanding anything to the contrary contained in this Agreement and for the purposes of clarity, the Parties agree that the Station Assets shall not include the following assets or any rights, title and interest therein (the "Excluded Assets"):

(a) all cash and cash equivalents, including without limitation certificates of deposit, commercial paper, treasury bills, marketable securities, money market accounts and all such similar accounts or investments;

(b) all tangible and intangible personal property retired or disposed of between the date of this Agreement and Closing in accordance with Article 4;

(c) all Seller business records, including, without limitation, financial records, charter documents, and books and records relating to the organization and existence of Seller, duplicate copies of the records of the Station, and all records not relating to the operation of the Station;

(d) all contracts of insurance, all coverages and proceeds thereunder and all rights in connection therewith, including without limitation rights arising from any refunds due with respect to insurance premium payments to the extent related to such insurance policies;

(e) all pension, profit sharing plans and trusts and the assets thereof and any other employee benefit plan or arrangement and the assets thereof, if any;

(f) all receivables (if any) and any other rights to receipt of cash that accrue or have accrued prior to the Effective Time (as defined in Section 1.6) or otherwise arising during or attributable to any period prior to the Effective Time (the "Receivables");

(g) all rights and claims, whether mature, contingent or otherwise, against third parties with respect to the Station and the Station Assets, to the extent arising during or attributable to any period prior to the Effective Time (as defined in Section 1.6);

(h) all deposits and prepaid expenses (and rights arising therefrom or related thereto), except to the extent Seller receives a credit therefor under Section 1.6 (Prorations and Adjustments);

Execution Version

(i) all rights and claims, whether mature, contingent or otherwise, primarily related to the Retained Obligations (as defined in Section 1.3);

(j) all assets used or held for use in the operation of any other radio or television station (other than the Station) owned or operated by Seller or an affiliate of Seller, or shared between any such station and the Station, except for the items specifically set forth on *Schedule 1.1(b)*;

(k) all intellectual property associated with the Station, including trademarks, trade names, service marks, internet domain names and websites, copyrights, slogans, or logos, including without limitation all intellectual property using or related to the call signs "KCSM" or "KCSM-TV", or any variation thereof, together with Seller's programming information and studies, marketing and demographic data, viewership studies and correspondence; and

(l) the items listed in *Schedule 1.2(l)* hereto.

1.3 Assumption of Obligations. On the Closing Date (as defined in Section 1.8), Buyer shall assume the (i) obligations of Seller arising during, or attributable to, any period of time on or after the Closing Date under the Station Contracts, (ii) all obligations and liabilities arising out of Buyer's ownership of the Station Assets, and (iii) any other liabilities of Seller to the extent Buyer receives a credit therefor under Section 1.6 (Prorations and Adjustments) (collectively, the "Assumed Obligations"). Except for the Assumed Obligations, Buyer does not assume, and will not be deemed by the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby to have assumed, any other liabilities or obligations of Seller (the "Retained Obligations").

1.4 Purchase Price. In consideration for the sale of the Station Assets to Buyer, at Closing Buyer shall pay Seller, by wire transfer of immediately available funds, the sum of Twelve Million Dollars (\$12,000,000.00) (including the Deposit (as defined in Section 1.5), subject to any adjustment pursuant to Section 1.6 (Prorations and Adjustments) (the "Purchase Price").

1.5 Deposit. On the date of this Agreement, Buyer shall make a cash deposit in immediately available funds in an amount equal to Nine Hundred and Sixty Thousand Dollars (\$960,000.00) (the "Deposit") with McGovern Escrow Services, Inc. (the "Escrow Agent") pursuant to the Escrow Agreement (the "Escrow Agreement") of even date herewith among Buyer, Seller and the Escrow Agent. At Closing, the Deposit shall be disbursed to Seller and applied to the Purchase Price and any interest accrued thereon shall be disbursed to Buyer. If this Agreement is terminated by Seller pursuant to Section 10.1(c), the Deposit and any interest accrued thereon shall be disbursed to Seller pursuant to Section 10.4 (Liquidated Damages). If this Agreement is terminated pursuant any other provision, the Deposit and any interest accrued thereon shall be disbursed to Buyer. The parties shall each cooperate to instruct the Escrow Agent to disburse the Deposit and all interest thereon to the party entitled thereto and shall not, by any act or omission, delay or prevent any such disbursement unless contested by a party in good faith in writing within five (5) business days of a disbursement request, in which event the Deposit shall remain with the Escrow Agent until the parties' dispute is resolved. Any failure by Buyer to make the Deposit on the date hereof constitutes a material default as to which the Cure

Execution Version

Period under Section 10.2 (Cure Period) shall not apply and shall entitle Seller to immediately terminate this Agreement.

1.6 Prorations and Adjustments. All prepaid and deferred income and expenses relating to the Station Assets and arising from the operation of the Station shall be prorated between Buyer and Seller in accordance with generally accepted accounting principles (“GAAP”) as of 12:01 a.m. on the day of Closing (the “Effective Time”). Such prorations shall include without limitation all taxes (except transfer taxes as provided by Section 11.1 (Expenses), music and other license fees, FCC regulatory fees, utility expenses, rent and other amounts under Station Contracts, and similar prepaid and deferred items. Seller shall receive a credit for all of the Station’s deposits and prepaid expenses to the extent they inure to Buyer’s benefit. Except as set forth in *Schedule 1.6*, Buyer will reimburse Seller for any expenses related to the Station’s involuntary channel reassignment in connection with reorganization of the television broadcast band pursuant to Section 6403(b) of the Middle Class Tax Relief and Job Creation Act of 2012 (“Repacking”) incurred by Seller but not reimbursed to Seller from the United States Treasury’s Repacking reimbursement fund as of the Effective Time, subject to Seller’s remittance to Buyer of any subsequent reimbursements received by Seller. To the extent possible, initial prorations and adjustments shall be made on the Closing Date, with final prorations and adjustments made no later than ninety (90) calendar days after Closing.

1.7 Additional Consideration. In further consideration for the sale of the Station Assets to Buyer, in addition to the Purchase Price, Buyer shall provide to Seller the additional consideration as set forth in *Schedule 1.7*.

1.8 Closing. The consummation of the sale and purchase of the Station Assets provided for in this Agreement (the “Closing”) shall take place on or before the tenth (10th) business day after the date on which the FCC Consent (as defined in Section 1.9) becomes a Final Order (as defined in Section 7.3) or on such other day after such FCC Consent as Buyer and Seller may mutually agree, subject to the satisfaction or waiver of the conditions set forth in Article 6 and Article 7. The date on which the Closing is to occur is referred to herein as the “Closing Date.”

1.9 FCC Consent. Within ten (10) business days after the date of this Agreement, Buyer and Seller shall file an application with the FCC (the “FCC Application”) requesting FCC consent to the assignment of the FCC Licenses to Buyer. FCC consent to the FCC Application without any material adverse conditions other than those of general applicability is referred to herein as the “FCC Consent”. Buyer and Seller shall diligently prosecute the FCC Application and otherwise use their commercially reasonable efforts to obtain the FCC Consent as soon as possible. Buyer and Seller shall notify each other of all documents filed with or received from any governmental agency with respect to this Agreement or the transactions contemplated hereby. Buyer and Seller shall furnish each other with such information and assistance as the other may reasonably request in connection with their preparation of any governmental filing hereunder. Except as otherwise provided herein, each party will be solely responsible for the expenses incurred by it in the preparation, filing, and prosecution of its respective portion of the FCC Application. Neither Buyer nor Seller shall take any intentional action that would, or intentionally fail to take such action the failure of which to take would, reasonably be expected to have the effect of materially delaying the issuance of the FCC Consent.

Execution Version

1.10 Repacking. Buyer acknowledges that it has reviewed Seller's plans, including equipment specifications, related to Repacking (as defined in Section 1.6). Seller agrees to give Buyer advance notice (which may be by email) of any material changes to the equipment specifications and vendors and to consider Buyer's recommendations regarding Repacking equipment specifications. For clarity, Seller has no obligation to Buyer with respect to Repacking, including without limitation any obligation to accept Buyer's recommendations regarding equipment specifications, except as expressly set forth in this Agreement.

ARTICLE 2: SELLER REPRESENTATIONS AND WARRANTIES

Seller makes the following representations and warranties to Buyer:

2.1 Organization. Seller is a California Community College District duly organized, validly existing and in good standing under the laws of the State of California. Seller has all requisite power and authority (i) to own, lease and use its assets as presently owned, leased and used, (ii) for the conduct the business and operations of Seller as presently conducted, (iii) to execute and deliver this Agreement, and (iv) to perform and comply with all of the terms, covenants, and conditions to be performed and complied with by Seller hereunder.

2.2 Authorization. The execution, delivery and performance of this Agreement by Seller have been duly authorized and approved by all necessary action of Seller and do not require any further authorization or consent of Seller. This Agreement is a legal, valid and binding agreement of Seller enforceable in accordance with its terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

2.3 No Conflicts. Except for the FCC Consent and consents to assign certain of the Station Contracts, and except as otherwise as set forth on *Schedule 2.10*, the execution, delivery and performance by Seller of this Agreement and the consummation by Seller of the transactions contemplated hereby do not conflict with any organizational documents of Seller or any other material contract to which Seller is bound, or any law, judgment, order, or decree to which Seller is subject, or require the consent or approval of, or a filing by Seller with, any governmental or regulatory authority.

2.4 FCC Licenses. Seller is the holder of the FCC Licenses described on *Schedule 1.1(a)*, which are all of the governmental licenses, permits and authorizations required for the present operation of the Station. The FCC Licenses are in full force and effect and have not been revoked, suspended, canceled, rescinded or terminated and have not expired. Except with respect to Repacking as set forth in *Schedule 1.1(a)*, there is no pending, or, to Seller's knowledge threatened, action by or before the FCC to revoke, suspend, cancel, rescind or materially adversely modify any of the FCC Licenses (other than proceedings to amend FCC rules and regulations of general applicability). There is not issued or outstanding, by or before the FCC, any order to show cause, notice of violation, notice of apparent liability, or order of forfeiture against the Station or against Seller with respect to the Station that could result in any such action. The Station is operating in compliance in all material respects with the FCC Licenses, the Communications Act of 1934, as amended (the "Communications Act"), and the

Execution Version

rules, regulations and policies of the FCC, other than such non-compliance as would not have a material adverse effect on Buyer, the Station Assets or the transactions contemplated by this Agreement. All material reports and filings required to be filed with the FCC by Seller with respect to the Station have been timely filed and all such reports and filings are accurate and complete, other than as would not have a material adverse effect on Buyer, the Station Assets or the transactions contemplated by this Agreement.

2.5 Taxes. Seller is not subject to taxation other than with respect to employment and sales and use taxes. It has timely filed all required tax returns in the manner prescribed by law, and all such tax returns are true, correct and complete in all material respects. Seller has properly accrued or paid to the extent such taxes have become due all taxes due from Seller. Seller has properly withheld all taxes as required. There are no liens for taxes upon the Station Assets. There is no dispute or claim concerning any tax liability relating to Seller either claimed or raised by any taxing authority. There are no pending tax audits or proposed tax audits of which Seller has notice.

2.6 Personal Property. *Schedule 1.1(b)* contains a list of all material items of Tangible Personal Property included in the Station Assets. Except as described in *Schedule 1.1(b)*, Seller has good title to or a valid leasehold or license interest in such Tangible Personal Property free and clear of Liens other than Permitted Liens. Subject the foregoing, each item of Tangible Personal Property is sold "as is" as of the Effective Date. Buyer shall give notice to Seller within forty (40) days after the date on which the FCC Application is filed of any items listed on *Schedule 1.1(b)* (other than the Sutro Equipment) it does not wish to acquire at closing, and *Schedule 1.1(b)* shall be deemed amended to exclude such items (such excluded items, the "Rejected Personal Property"), and Buyer shall thereafter have no rights with respect to the Rejected Personal Property.

2.7 Contracts. *Schedule 1.1(c)* contains a list of all contracts that are included in the Station Contracts. The Station Contracts requiring the consent of a third party to assignment are identified on *Schedule 1.1(c)*. Each of the Station Contracts is in effect and is binding upon Seller and the other parties thereto (subject to bankruptcy, insolvency, reorganization or other similar laws relating to or affecting the enforcement of creditors' rights generally). Seller has performed its obligations under each of the Station Contracts in all material respects, and is not in material default thereunder, and no other party to any of the Station Contracts is in default thereunder in any material respect.

2.8 Insurance. All of the Tangible Personal Property is (a) self-insured against loss or damage up to a limit of \$150,000 in accordance with California law and Seller's established practice, and such insurance will be maintained in effect by Seller until the Closing, and (b) insured with a commercial insurance company for loss or damage in excess of the self-insurance amount up to \$5,000,000.

2.9 Compliance with Law. Other than such non-compliance as would not have a material adverse effect on a reasonable buyer, the Station Assets or the transactions contemplated by this Agreement, Seller has complied with all laws, rules and regulations, including without limitation all FCC rules and regulations applicable to the operation of the Station, and all decrees and orders of any court or governmental authority which are applicable to the operation of the Station. To Seller's knowledge, there are no claims or investigations by

Execution Version

the government pending or threatened against Seller in respect of the Station except those affecting the industry generally.

2.10 Litigation. Except as set forth on *Schedule 2.10*, there is no action, suit or proceeding pending or, to Seller's knowledge, threatened against Seller in respect to the Station Assets that will or threatens to subject Buyer to liability or which will or threatens to affect Seller's ability to perform its obligations under this Agreement. Seller is not operating under or subject to any order, writ, injunction or decree relating to the Station Assets of any court or governmental authority which would have a material adverse effect on the condition of the Station Assets or on the ability of Seller to enter into this Agreement or consummate the transactions contemplated hereby, other than those of general applicability (e.g., Repacking).

2.11 Disclaimer of Other Express and Implied Representations and Warranties. Except for the representations and warranties expressly made by Seller in this Article 2, Seller makes no other representations or warranties, express or implied, whether statutory or by common law regarding Seller, the business and operation of the Station, or the Station Assets.

2.12 No Other Representations or Warranties. Seller agrees that neither Buyer nor any of its representatives has made and shall not be deemed to have made, nor has Seller or any of its representatives relied on, any representation, warranty, covenant or agreement, express or implied, or any statement or information, with respect to Buyer, its business, or its proposed acquisition and operation of the Station, other than those representations, warranties, covenants and agreements explicitly set forth in Article 3. Seller further acknowledges and agrees that (a) it has made its own investigation into, and based thereon has formed an independent judgment concerning the Buyer, its business and the proposed acquisition and operation of the Station, and (b) Buyer has made available such information about Buyer as Seller has reasonably requested.

ARTICLE 3: BUYER REPRESENTATIONS AND WARRANTIES

Buyer hereby makes the following representations and warranties to Seller:

3.1 Organization. Buyer is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, and is, or will be at Closing, qualified to do business in the state of California. Buyer has the requisite power and authority to execute, deliver and perform this Agreement and all of the other agreements and instruments to be executed and delivered by Buyer pursuant hereto and to consummate the transactions contemplated hereby.

3.2 Authorization. The execution, delivery and performance of this Agreement by Buyer has been duly authorized and approved by all necessary action of Buyer and do not require any further authorization or consent of Buyer. This Agreement is a legal, valid and binding agreement of Buyer enforceable in accordance with its terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

Execution Version

3.3 No Conflicts. Except for the FCC Consent, the execution, delivery and performance by Buyer of this Agreement and the consummation by Buyer of any of the transactions contemplated hereby do not conflict with any organizational documents of Buyer, any contract or agreement to which Buyer is a party or is by which it is bound, or any law, judgment, order or decree to which Buyer is subject, or require the consent or approval of, or a filing by Buyer with, any governmental or regulatory authority or any third party.

3.4 Litigation. There is no action, suit or proceeding pending or, to Buyer's knowledge, threatened against Buyer which questions the legality or propriety of the transactions contemplated by this Agreement or could materially adversely affect the ability of Buyer to perform its obligations hereunder.

3.5 Qualification. Buyer is legally, financially and otherwise qualified to be the licensee of, acquire, own and operate the Station under the Communications Act and the rules, regulations and policies of the FCC, including, but not limited to, eligibility to hold a noncommercial educational license under Section 73.621 of those rules. There are no facts that would, under existing law and the existing rules, regulations, policies and procedures of the FCC, disqualify Buyer as an assignee of the FCC Licenses or as the owner and operator of the Station, or that that would reasonably be expected to delay the FCC's processing of the FCC Application because of Buyer's qualifications. No divestiture, waiver of or exemption from any existing FCC rule or policy on the part of Buyer is necessary for the FCC Consent to be obtained.

3.6 Financing. Buyer has on hand or from committed funds financial resources sufficient to consummate the transactions contemplated by this Agreement and to operate the Station after the Closing Date. Buyer's obligations hereunder are not subject to or conditioned upon it obtaining financing or a financing commitment of any nature.

3.7 No Other Representations or Warranties. Buyer agrees that neither Seller nor any of its representatives has made and shall not be deemed to have made, nor has Buyer or any of its representatives relied on, any representation, warranty, covenant or agreement, express or implied, or any statement or information, with respect to Seller, its business, the Station, or the Station Assets, other than those representations, warranties, covenants and agreements explicitly set forth in Article 2. Buyer further acknowledges and agrees that (a) it has made its own investigation into, and based thereon has formed an independent judgment concerning the Station and the Station Assets, and (b) Seller has made available such information about the Station and the Station Assets as Buyer has reasonably requested.

ARTICLE 4: SELLER AND BUYER COVENANTS

4.1 Seller's Covenants. Between the date hereof and Closing, except as permitted by this Agreement or with the prior written consent of Buyer, which shall not be unreasonably withheld, delayed or conditioned, Seller shall:

- (a) use commercially reasonable efforts to operate the Station in the ordinary course of business (for avoidance of doubt, any expense reductions made consistent with Seller's past practices shall be deemed in the ordinary course of business) and in all material respects in accordance with FCC rules and regulations and with all other applicable laws, regulations, rules and orders;

Execution Version

(b) except with respect to Repacking as set forth in *Schedule 1.1(a)* and Section 4.1(h), not modify, and in all material respects maintain in full force and effect, the FCC Licenses;

(c) except in the ordinary course of business, not sell, lease or dispose of or agree to sell, lease or dispose of any of the Station Assets unless replaced with similar items of substantially equal or greater value and utility, or create, assume or permit to exist any Liens upon the Station Assets, except for Permitted Liens, and not dissolve, liquidate, merge or consolidate with any other entity;

(d) use commercially reasonable efforts to maintain the Tangible Personal Property in the ordinary course of business;

(e) upon reasonable notice, give Buyer and its representatives reasonable access during normal business hours to the Station Assets, and furnish Buyer with information relating to the Station Assets that Buyer may reasonably request, provided that such access rights shall not be exercised in a manner that interferes with the operation of the Station;

(f) not enter into new Station Contracts that will be binding upon Buyer after Closing or amend or terminate any existing Station Contracts, except for Station Contracts made, amended or terminated with Buyer's prior written consent;

(g) cooperate with Buyer in timely filing such applications and other material as may be required to obtain FCC Consent to the assignment of the FCC Licenses to Buyer, including, but not limited to, providing the FCC with such information as it may reasonably request, assisting Buyer in providing such information, where appropriate, and generally using commercially reasonable efforts to obtain the prompt and timely FCC Consent; and

(h) take such commercially reasonable steps as are required by the Mt. Sutro transmitter site landlord and, in consultation with Buyer as provided by Section 1.10 (Repacking), such other steps as Seller reasonably deems necessary and appropriate, in each case to enable the Station to meet the Repacking requirements and schedule established by the FCC.

4.2 Buyer's Covenants. Between the date hereof and Closing, except as permitted by this Agreement or with the prior written consent of Seller, which shall not be unreasonably withheld, delayed or conditioned, Buyer shall:

(a) take no action that would reasonably be expected to impair its qualifications to be the licensee of the Station, materially delay obtaining the FCC Consent, result in its disqualification under the rules of the FCC to be the licensee of the Station, or that would require it to obtain a waiver of the FCC Rules in order to obtain the FCC Consent;

(b) cooperate with Seller in timely filing such applications and other material as may be required to obtain FCC Consent to the assignment of the FCC Licenses to Buyer, including, but not limited to, providing the FCC with such information as it may reasonably request, assisting Seller in providing such information, where appropriate, and

Execution Version

generally using commercially reasonable efforts to obtain the prompt and timely FCC Consent; and

(c) after joining in the filing of the application for FCC Consent, apply promptly to the FCC for a change in the Station call sign to take effect upon Closing so as to avoid confusion with Seller's continuing operation of Station KCSM (FM), San Mateo, California.

ARTICLE 5: JOINT COVENANTS

Buyer and Seller hereby covenant and agree as follows:

5.1 Control. Buyer shall not, directly or indirectly, control, supervise or direct the operation of the Station prior to Closing. Consistent with the Communications Act and the FCC rules and regulations, control, supervision and direction of the operation of the Station prior to Closing shall remain the responsibility of Seller as the holder of the FCC Licenses.

5.2 Risk of Loss. Seller shall bear the risk of any loss of or damage to the Tangible Personal Property located at the Mt. Sutro transmitter site and necessary for the operation of the Station as it is operated as of the Effective Date (the "Sutro Equipment") at all times until the Closing, and Buyer shall bear the risk of any such loss or damage thereafter. In the event that any loss of or material damage to the Sutro Equipment occurs after the Effective Date but prior to Closing, then upon becoming aware of such loss or material damage, Seller shall use commercially reasonable efforts to promptly notify Buyer in writing, and it shall be the responsibility of Seller, prior to Closing, to repair or cause to be repaired or replaced, and to restore, the affected Sutro Equipment substantially to its condition prior to any such loss, damage or destruction; provided, that in the event that any Sutro Equipment is not repaired, replaced, or restored prior to Closing, Buyer, at its sole option, upon written notice to Seller: (a) may elect to postpone the Closing until the earlier of (A) such time as the property has been repaired, replaced, or restored in all material respects, or (B) up to six (6) months from the date when all other conditions to Closing herein have been satisfied (other than those conditions that by their nature are to be satisfied at Closing, but subject to the satisfaction of those conditions at such time); or (b) may at any time during such six (6) month period elect to consummate the Closing and accept the property in its then condition, in which event the Purchase Price shall be reduced by the estimated cost of such repair, replacement or restoration of the Sutro Equipment as determined by an independent third-party engineer agreeable to both Parties, which engineer Seller and Buyer shall instruct to base the estimate on the least expensive approach that complies with good engineering practices, considering the timeframe of Repacking. If Buyer shall extend the time for Closing pursuant to clause (a) above, the provisions of Section 10.1(d) shall be tolled for such time as Buyer has elected to postpone the Closing pursuant to this Section 5.2 and Seller is using reasonable best efforts to effect such repair, replacement or restoration, and for five (5) business days after the property involved has been repaired, replaced or restored in all material respects.

5.3 Consents.

(a) The parties shall use commercially reasonable efforts to obtain any third party consents necessary for the assignment of any Station Contract (which commercially

Execution Version

reasonable efforts shall not require any payment to any such third party), but no such consents shall be conditions to Closing except for the Required Consents. Receipt of consents designated with a diamond on *Schedule 1.1(c)* shall be a condition precedent to Buyer's obligation to close under this Agreement (the "Required Consents").

(b) To the extent that any Station Contract may not be assigned without the consent of any third party, and such consent is not obtained prior to Closing, this Agreement and any assignment executed pursuant to this Agreement shall not constitute an assignment of such Station Contract; provided, however, with respect to each such Station Contract, Seller and Buyer shall cooperate to the extent feasible in effecting a lawful and commercially reasonable arrangement under which Buyer shall receive the benefits under the Station Contract from and after Closing, and to the extent of the benefits received, Buyer shall pay and perform Seller's obligations arising under the Station Contract from and after Closing in accordance with its terms. This subparagraph 5.3(b) shall not apply to the Required Consents.

5.4 FCC Qualification. Neither Buyer nor any person with an attributable interest in Buyer shall file any application to acquire any station or otherwise operate any station if, as a result, such action would cause Buyer, or any person with an attributable interest in Buyer, to have an attributable interest in, and/or seek to acquire an attributable interest in, any station(s) which would involve a greater number of stations than would be permitted, absent an exemption or waiver, under the Communications Act, or any of the rules, regulations or policies the FCC, including the FCC's multiple ownership rules, in effect from time to time, or which would raise market concentration questions under applicable law.

5.5 Actions. After Closing, if reasonably requested by Seller, Buyer shall cooperate with Seller in the investigation, defense or prosecution of any action that is pending or threatened against Seller or its affiliates with respect to the Station, whether or not such action is subject to a claim for indemnification pursuant to this Agreement; provided, however, that Seller shall reimburse Buyer for the out-of-pocket costs (including reasonable attorneys' fees), if any, reasonably incurred by Buyer to comply with this Section 5.5.

ARTICLE 6: SELLER CLOSING CONDITIONS

The obligation of Seller to consummate the Closing hereunder is subject to satisfaction, at or prior to Closing, of each of the following conditions (unless waived in writing by Seller):

6.1 Representations and Covenants.

(a) The representations and warranties of Buyer 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.

(b) The covenants and agreements to be complied with and performed by Buyer at or prior to Closing shall have been complied with and performed in all material respects.

(c) Seller shall have received a certificate dated as of the Closing Date from Buyer executed by an authorized officer of Buyer to the effect that the conditions set forth in Sections 6.1(a) and (b) have been satisfied.

Execution Version

6.2 Proceedings. Neither Seller nor Buyer shall be subject to any court or governmental order or injunction restraining or prohibiting the consummation of the transactions contemplated hereby.

6.3 FCC Authorization. The FCC Consent shall have been obtained.

6.4 Deliveries. Buyer shall have complied with its obligations set forth in Section 8.2 (Buyer Documents).

ARTICLE 7: BUYER CLOSING CONDITIONS

The obligation of Buyer to consummate the Closing hereunder is subject to satisfaction, at or prior to Closing, of each of the following conditions (unless waived in writing by Buyer):

7.1 Representations and Covenants.

(a) The representations and warranties of Seller 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.

(b) The covenants and agreements to be complied with and performed by Seller at or prior to Closing shall have been complied with and performed in all material respects.

(c) Buyer shall have received a certificate dated as of the Closing Date from Seller executed by an authorized official of Seller to the effect that the conditions set forth in Sections 7.1(a) and (b) have been satisfied.

7.2 Proceedings. Neither Seller nor Buyer shall be subject to any court or governmental order or injunction restraining or prohibiting the consummation of the transactions contemplated hereby.

7.3 FCC Authorization. The FCC Consent shall have been obtained and, unless waived by Buyer, the FCC Consent shall have become a Final Order. For purposes of this Agreement, the term "Final Order" shall mean that action shall have been taken by the FCC (including action duly taken by the FCC's staff, pursuant to delegated authority) which shall not have been reversed, stayed, enjoined, set aside, annulled or suspended; with respect to which no timely request for stay, petition for rehearing, appeal or certiorari or *sua sponte* action of the FCC with comparable effect shall be pending; and as to which the normal time for filing any such request, petition, appeal, certiorari or for the taking of any such *sua sponte* action by the FCC shall have expired or otherwise terminated.

7.4 Deliveries. Seller shall have complied with its obligations set forth in Section 8.1 (Seller Documents).

7.5 Consents. The Required Consent shall have been obtained, including but not limited to landlord consents for all studio and transmitter site leases (to the extent such leases require such consent) being assigned and assumed hereunder.

*Execution Version*ARTICLE 8: CLOSING DELIVERIES

8.1 Seller Documents. At Closing, Seller shall deliver or cause to be delivered to Buyer:

- (i) the certificate described in Section 7.1(c);
- (ii) an assignment of FCC authorizations assigning the FCC Licenses from Seller to Buyer;
- (iii) an assignment and assumption of contracts assigning the Station Contracts from Seller to Buyer;
- (iv) an assignment and assumption of intangible assets assigning the Intangible Assets (if any) from Seller to Buyer;
- (v) a bill of sale conveying the Tangible Personal Property from Seller to Buyer;
- (vi) a copy of the Required Consents;
- (vii) certified resolutions of Seller's Board of Trustees approving the execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated herein, and the delivery of the closing documents provided for hereunder; and
- (viii) any other instruments of conveyance, assignment and transfer that may be reasonably necessary to convey, transfer and assign the Station Assets from Seller to Buyer, free and clear of Liens, except for Permitted Liens.

8.2 Buyer Documents. At Closing, Buyer shall deliver or cause to be delivered to Seller:

- (i) the Purchase Price in accordance with Sections 1.4 (Purchase Price) and 5.2 (Risk of Loss) and 10.6(d) hereof;
- (ii) the certificate described in Section 6.1(c);
- (iii) an assignment and assumption of contracts assuming the Station Contracts;
- (iv) an assignment and assumption of intangible assets assigning the Intangible Assets (if any) from Seller to Buyer;
- (v) a good standing certificate issued by the Secretary of State of Buyer's jurisdiction of formation;
- (vi) certified resolutions of Buyer's Board of Directors approving the execution, delivery, and performance of this Agreement and the consummation of the

Execution Version

transactions contemplated herein, and the delivery of the closing documents provided for hereunder; and

(vii) such other documents and instruments of assumption that may be necessary to assume the Assumed Obligations (as defined in Section 1.3).

ARTICLE 9: SURVIVAL; INDEMNIFICATION

9.1 Survival.

(a) Except as provided by Section 1.5 (Deposit) and Section 10.4 (Liquidated Damages) with respect to Liquidated Damages, the termination of this Agreement shall not relieve any party of liability for any material breach or default under this Agreement prior to the date of termination. Notwithstanding anything contained herein to the contrary, Section 1.5 (Deposit) and Section 11.1 (Expenses) shall survive any termination of this Agreement.

(b) The representations and warranties in this Agreement, made as of the Closing, shall survive for a period of one (1) year from the Closing Date, whereupon they shall expire and be of no further force or effect, except (i) those under Section 2.1 (Organization), Section 2.2 (Authorization), Section 2.5 (Taxes), Section 3.1 (Organization) and Section 3.2 (Authorization) (collectively, the "Fundamental Representations"), all of which shall survive until the expiration of any applicable statute of limitations, and (ii) that if within such applicable period the indemnified party gives the indemnifying party written notice of a claim for breach thereof describing in reasonable detail the nature and basis of such claim, then such claim shall survive until the earlier of resolution of such claim or expiration of the applicable statute of limitations. The covenants and agreements in this Agreement that are to be performed after the Closing shall survive until performed and any other covenants and agreements shall survive for a period of nine (9) months from the Closing Date.

9.2 Indemnification.

(a) From and after Closing, Seller shall defend, indemnify and hold harmless Buyer and its officers, directors, members and employees from and against and in respect of, and reimburse them for, any and all losses, costs, damages, liabilities and expenses, including reasonable attorneys' fees and expenses ("Damages") resulting from:

(i) any material breach by Seller of its representations and warranties made under Article 2 of this Agreement; or

(ii) any material breach by Seller of any material obligation under this Agreement; or

(iii) any material breach by Seller of the Retained Obligations (as defined in Section 1.3); or

(iv) the business or operation of the Station before the Effective Time, except for the Assumed Obligations (as defined in Section 1.3); or

Execution Version

(v) any third party claim, demand, lawsuit or action resulting from any material breach or deviation, as applicable, as described in Section 9.2(a)(i)-(iv).

(b) Notwithstanding the foregoing or anything else in the Agreement to the contrary, Seller shall have no liability to Buyer until Buyer's aggregate Damages exceed the sum of Five Thousand Dollars (\$5,000) ("Basket"), after which the amount of the Basket shall be excluded from any calculation of Damages.

(c) From and after Closing, Buyer shall defend, indemnify and hold harmless Seller and its officers, directors, members and employees from and against and in respect of, and reimburse them for, any and all Damages incurred by Seller in connection any claim, demand, lawsuit or action arising out of or resulting from:

(i) any material breach by Buyer of its representations and warranties made under this Agreement; or

(ii) any material breach by Buyer of any material obligation under this Agreement; or

(iii) any material breach by Buyer of the Assumed Obligations (as defined in Section 1.3); or

(iv) the business or operation of the Station after the Effective Time, except for the Retained Obligations; or

(v) any third party claim, demand, lawsuit or action resulting from any material breach, or the business or operation of the Station, as applicable, as described in Section 9.2(c)(i)-(iv).

(d) Notwithstanding the foregoing or anything else in this Agreement to the contrary, Buyer shall have no liability to Seller until Seller's aggregate Damages exceed the Basket, after which the amount of the Basket shall be excluded from any calculation of Damages.

9.3 Indemnification Procedures for Third Party Claims.

(a) The indemnified party shall give prompt written notice to the indemnifying party of any demand, suit, claim or assertion of liability by third parties that is subject to indemnification hereunder (a "Claim"), but a failure to give such notice or delaying such notice shall not affect the indemnified party's rights or the indemnifying party's obligations except to the extent the indemnifying party's ability to remedy, contest, defend or settle with respect to such Claim is thereby prejudiced and provided that such notice is given within the time period described in Section 9.1 (Survival).

(b) The indemnifying party shall have the right to undertake the defense or opposition to such Claim with counsel selected by it. In the event that the indemnifying party does not undertake such defense or opposition in a timely manner, the indemnified party may undertake the defense, opposition, compromise or settlement of such Claim with counsel selected by it and the indemnifying party shall be required to pay for reasonable attorneys' fees and costs

Execution Version

incurred by the indemnified party (subject to the right of the indemnifying party to assume defense of or opposition to such Claim at any time prior to settlement, compromise or final determination thereof).

(c) Anything in this Agreement to the contrary notwithstanding:

(i) the indemnified party shall have the right, at its own cost and expense, to participate in the defense, opposition, compromise or settlement of the Claim;

(ii) the indemnifying party shall not, without the indemnified party's written consent, settle or compromise any Claim or consent to entry of any judgment that does not include the giving by the claimant to the indemnified party a release from all liability in respect of such Claim subject to the limitations herein; and

(iii) in the event that the indemnifying party undertakes defense of or opposition to any Claim, the indemnified party, by counsel or other representative of its own choosing and at its sole cost and expense, shall have the right to consult with the indemnifying party and its counsel concerning such Claim and the indemnifying party and the indemnified party and their respective counsel shall cooperate in good faith with respect to such Claim.

(d) In determining the amount of any Damages hereunder, the amount shall be determined after deducting the amount of any insurance proceeds and other third party recoveries actually received by Seller or Buyer or any of its affiliates in respect thereof (which proceeds and recoveries Seller or Buyer agrees to use, or to cause any such affiliate to use, diligent efforts to obtain) and the amount of any tax benefit related thereto. If an indemnification payment is received by Seller or Buyer, and Seller or Buyer or any of their affiliates later receives insurance proceeds, other third party recoveries, or tax benefits in respect of the related Damages, Seller or Buyer shall promptly pay to the other a sum equal to the lesser of (y) the actual amount of insurance proceeds, other third party recoveries, and tax benefits or (z) the actual amount of the indemnification payment previously paid by the other with respect to such Damages. Seller and Buyer shall use, and shall cause its affiliates to use, commercially reasonable efforts to mitigate the amount of Damages for which it may be entitled to indemnification hereunder.

9.4 Remedies Exclusive.

(a) The remedies provided in this Article 9 and in Article 10 shall be the exclusive remedies of the parties hereto in connection with the transactions contemplated by this Agreement, including without limitation any breach or non-performance of any representation, warranty, covenant, obligation or agreement contained herein. No party (and no affiliate of any party) may commence any suit, action or proceeding against any other party hereto with respect to the subject matter of this Agreement, whether in contract, tort or otherwise, except to enforce such party's express rights pursuant to this Article 9 or Article 10. The provisions of Articles 9 and 10 were specifically bargained for and reflected in the amounts payable to Seller in connection with the transactions contemplated hereby.

(b) Without limiting the foregoing and notwithstanding anything that may be expressed or implied in this Agreement, Seller and Buyer each agree and acknowledge that

Execution Version

their only recourse hereunder is against the other. Without limiting the generality of the foregoing sentence, Seller and Buyer each agree and acknowledge that (a) no recourse shall be had against any past, current or future affiliate, shareholder, director, officer, employee, agent, trustee, board or other governing entity, or attorney of the other (collectively, the "Excluded Persons"), with respect to the subject matter of this Agreement, and (b) neither it nor any of its affiliates shall commence any suit, action or proceeding against any Excluded Person with respect to the subject matter of this Agreement, whether in contract, tort or otherwise.

9.5 Tax Treatment of Indemnity Payments. It is the intention of the parties to treat any indemnity payment made under this Agreement as an adjustment to the purchase price for all purposes, and the parties agree to file their tax returns accordingly.

ARTICLE 10: TERMINATION; SPECIFIC PERFORMANCE; LIMITATION OF LIABILITY

10.1 Termination. Subject to Section 9.1 (Survival), this Agreement may be terminated prior to Closing as follows:

- (a) by mutual written consent of Buyer and Seller;
- (b) by written notice of Buyer to Seller if Seller breaches its representations or warranties or defaults in the performance of its obligations or covenants set forth in this Agreement and such breach or default is material in the context of the transactions contemplated hereby and is not cured within the Cure Period (as defined in Section 10.2);
- (c) by written notice of Seller to Buyer if Buyer breaches its representations or warranties or defaults in the performance of its obligations or covenants set forth in this Agreement and such breach or default is material in the context of the transactions contemplated hereby and is not cured within the Cure Period; provided, however, that the Cure Period shall not apply to Buyer's obligations to make the Deposit on the date hereof and to pay the Purchase Price at Closing; or
- (d) by written notice of Seller to Buyer or Buyer to Seller, as long as the terminating party is not in breach of any of its representations or warranties or in default in the performance of any of its obligations or covenants set forth in this Agreement, if Closing does not occur by the date twelve (12) months after the date of this Agreement.

10.2 Cure Period. Each party shall give the other party prompt written notice upon learning of any breach or default by the other party under this Agreement. The term "Cure Period" as used herein means a period commencing on the date Buyer or Seller receives from the other written notice of breach or default hereunder and continuing until the earlier of (i) twenty (20) calendar days thereafter or (ii) the Closing Date; provided, however, that if the breach or default is non-monetary and cannot reasonably be cured within such period but can be cured before the Closing Date, and if diligent efforts to cure promptly commence, then the Cure Period shall continue as long as such diligent efforts to cure continue, but not beyond the Closing Date.

10.3 Specific Performance. Notwithstanding Section 9.4(a), in the event of failure or threatened failure by either party to comply with the terms of this Agreement, the other party shall be entitled to an injunction restraining such failure or threatened failure and, subject to obtaining any necessary FCC consent, to enforce this Agreement by a decree of specific

Execution Version

performance requiring compliance with this Agreement. If a party brings an action to enforce specific performance under this Agreement, the other party shall waive the defense that there is an adequate remedy at law and waive any requirement to post a bond or other security.

10.4 Liquidated Damages. If Seller terminates this Agreement pursuant to Section 10.1(c), then Seller shall be entitled to the Deposit and such payment shall constitute liquidated damages and the sole remedy of Seller for a breach by Buyer of this Agreement. The parties acknowledge and agree that payment of such amount shall constitute payment of liquidated damages and is not a penalty and that the liquidated damages amount is reasonable in light of the substantial but indeterminate harm anticipated to be caused by material breach or default under this Agreement, the difficulty of proof of loss and damages, the inconvenience and non-feasibility of otherwise obtaining an adequate remedy, and the value of the transactions to be consummated hereunder. In addition, if Buyer contests Seller's right to the Deposit, then the prevailing party in any action by Seller to enforce its right to the Deposit shall be entitled to payment by the other party of the reasonable attorneys' fees incurred by the prevailing party in such action.

10.5 Limitation of Liability. Notwithstanding anything in this Agreement to the contrary, neither party shall have any liability to the other under any circumstances for special, indirect, consequential, punitive or exemplary damages or similar damages of any kind, including any damages calculated using a "multiplier" or any other similar method, whether or not foreseeable, occasioned by any failure to perform or the breach or default of any representation, covenant, warranty or other obligation under this Agreement, whether based in negligence or otherwise.

10.6 Special Termination Right of Buyer. Subject to Section 9.1 (Survival), in addition to the termination rights set forth in Section 10.1 (Termination), Buyer may terminate this Agreement prior to Closing as set forth in this Section 10.6:

(a) Buyer may terminate this Agreement by written notice to Seller if LocusPoint Networks LLC ("LPN") or any party affiliated with LPN files with the FCC any petition or opposition to the FCC Application or to Seller's or Buyer's qualifications to hold a broadcast license, and as a result of such filing, either (i) FCC Consent is delayed more than six (6) months after the date on which the FCC Application is filed and it is not then reasonably foreseeable that FCC Consent will be obtained within sixty (60) days thereafter or (ii) FCC Consent is delayed more than eight (8) months after the date on which the FCC Application is filed.

(b) Buyer may terminate this Agreement by written notice to Seller if LPN or any party affiliated with LPN initiates any legal or equitable action to oppose, obstruct or delay the sale of the Station Assets by Seller or purchase of the Station Assets by Buyer and thereby obtains an order from a court of competent jurisdiction that is legally binding on one or both parties to this Agreement that (i) by its terms prevents the Closing; (ii) by its terms imposes conditions on the Closing that either Buyer or Seller are not willing or able to satisfy within ten (10) days after the date on which all other closing conditions set forth in Articles 6 and 7 have been met or waived; or (iii) otherwise delays the Closing for more than eight (8) months after the date on which the FCC Application is filed.

Execution Version

(c) Buyer may terminate this Agreement by written notice to Seller if Buyer is for any reason made a party to any legal or equitable action by LPN or Seller arising out of the dispute between LPN and Seller that is the subject of the litigation described in Schedule 2.10.

(d) In the event that Buyer forebears from exercising its rights to terminate under Section 10.6(a)-(c), and Buyer deems it necessary or advisable to incur legal costs and other related expenses in connection with responding to or defending against any claims or assertions relating to Buyer, then the Purchase Price shall be reduced by such costs and expenses reasonably incurred by Buyer prior to Closing; provided, that Buyer shall notify Seller of such expenses as they are incurred (i.e, within ten (10) days of receiving each invoice). Notwithstanding the immediately foregoing sentence, at any time after such expenses incurred by Buyer exceed Seventy-Five Thousand Dollars (\$75,000.00) in the aggregate, Seller shall have the right to reimburse such expenses to Buyer and terminate this Agreement without further liability to Buyer by giving Buyer ten (10) days' notice of its intent to do so; unless Buyer gives notice to Seller within such 10-day notice period that it agrees to pay such expenses in excess of \$75,000 going forward.

ARTICLE 11: MISCELLANEOUS

11.1 Expenses. Each party shall be solely responsible for all costs and expenses incurred by it in connection with the negotiation, preparation and performance of and compliance with the terms of this Agreement. Transfer or sales or use taxes, fees and charges applicable to the transfer of the Station Assets under this Agreement, if any, shall be paid one-half by Buyer and one-half by Seller. Each party is responsible for any commission, brokerage fee, advisory fee or other similar payment that arises as a result of any agreement or action of it or any party acting on its behalf in connection with this Agreement or the transactions contemplated hereby.

11.2 Further Assurances. After Closing, each party shall from time to time, at the request of and without further cost or expense to the other, execute and deliver such other instruments of conveyance and assumption and take such other actions as may reasonably be requested in order to more effectively consummate the transactions contemplated hereby.

11.3 Assignment. Neither party may assign all or part of this Agreement without the prior written consent of the other party hereto. The terms of this Agreement shall bind and inure to the benefit of the parties' respective successors and any permitted assigns, and no assignment shall relieve any party of any obligation or liability under this Agreement.

11.4 Notices. Any notice pursuant to this Agreement shall be in writing and shall be deemed delivered on the date of personal delivery or confirmed facsimile transmission or confirmed delivery by a nationally recognized overnight courier service, and shall be addressed as follows (or to such other address as any party may request by written notice):

To Seller: San Mateo Community College District
3401 CSM Drive
San Mateo, California 94402
Attn: Executive Vice Chancellor

Execution Version

with copies to: Kathy Blackwood
San Mateo County Community College District
3401 CSM Drive
San Mateo, California 94402

and Pillsbury Winthrop
1200 – 17th St. SW
Washington, DC 20036
Attn: John Hane

To Buyer: Rural California Broadcasting Corporation
5850 Labath Avenue
Rohnert Park, CA 94928
Attn: Nancy Dobbs, President and CEO

with copy to: Gray Miller Persh LLP
1200 New Hampshire Avenue NW, Suite 410
Washington, DC 20036
Attn: Todd D. Gray

11.5 Amendments. No amendment or waiver of compliance with any provision 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 such amendment, waiver, or consent is sought.

11.6 Entire Agreement. This Agreement (including the Schedules hereto) constitutes the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and understandings with respect to the subject matter hereof. No party makes any representation or warranty with respect to the transactions contemplated by this Agreement except as expressly set forth in this Agreement and each party hereby confirms that it has not relied upon any representations or statements, whether written or oral, except those representations and warranties set forth in Article 2 and 3 of this Agreement.

11.7 Severability. If any court or governmental authority holds any provision in this Agreement invalid, illegal or unenforceable under any applicable law, then, so long as no party is deprived of the benefits of this Agreement in any material respect, 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.

11.8 No Beneficiaries. Nothing in this Agreement expressed or implied is intended or shall be construed to give any rights to any person or entity other than the parties hereto and their successors and permitted assigns.

11.9 Governing Law and Venue. The construction and performance of this Agreement shall be governed by the laws of the State of California without giving effect to the

Executton Version

choice of law provisions thereof. Any action to enforce the terms of this Agreement shall be brought in the courts of the State of California with venue lying in the County of San Mateo.

11.10 Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement and the other agreements, documents and instruments contemplated herein, all provisions shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authoring any of the provisions.

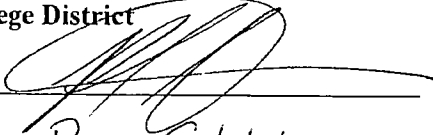
11.11 Counterparts. This Agreement may be executed in separate counterparts, each of which will be deemed an original and all of which together will constitute one and the same agreement.

[SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT

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

**San Mateo County Community
College District**

By: 

Printed: Ron Galatolo

Title: Chancellor

**Rural California Broadcasting
Corporation**

By: _____

Printed: _____

Title: _____

SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT

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

**San Mateo County Community
College District**

**Rural California Broadcasting
Corporation**

By: _____

By: Nancy Dobbs

Printed: _____

Printed: NANCY DOBBS

Title: _____

Title: Pres & CEO

List of Schedules

- 1.1(a) – FCC Licenses
- 1.1(b) – Tangible Personal Property
- 1.1(c) – Station Contracts
- 1.2(l) – Other Excluded Assets
- 1.6 – Repacking Expenses
- 1.7 – Additional Consideration
- 2.10 – Seller Litigation

Schedule 1.1(a)

FCC Licenses, Applications, and Authorizations

1. Television broadcast station license (FCC file no. BLEDT-20091124AHY).
2. License renewal authorization (FCC file no. BREDT-20140721AEJ; expires 12/1/2022).
3. *Construction permit authorizing minor modification of BLEDT-20091124AHY to specify operation on Channel 27 (FCC File No. 0000028093).
4. Television broadcast station auxiliary antenna license (FCC file no. BXLEDT-20120621AAB).
5. Earth Station license E040364 (FCC file no. SES-REG-20040909-01357; expires 9/9/2019).
6. FCC Form 399, Incentive Auction Relocation Reimbursement (file number 0000028092), filed July 11, 2017, and pending with the FCC.

*Pursuant to the FCC's process of "repacking" television broadcast stations, Seller has been assigned to Transition Phase 8, and is required to complete construction and testing of Station's authorized Channel 27 facilities on or before **January 18, 2020**. The Station must discontinue operations on its pre-auction channel on or before **March 13, 2020** (together, the "Repacking Deadlines"). See FCC Public Notice "Incentive Auction Closing and Channel Reassignment Public Notice", DA 17-314 (released April 13, 2017). NOTWITHSTANDING ANYTHING IN THE AGREEMENT OR THE SCHEDULES THERETO TO THE CONTRARY, SELLER MAKES NO REPRESENTATION OR WARRANTY REGARDING THE FEASIBILITY OR ABILITY OF SELLER OR BUYER TO MEET THE FCC'S REPACKING DEADLINES.

Schedule 1.1(b)

Tangible Personal Property*Property subject to Liens identified with a diamond (◆).*

Mt. Sutro Transmitter Site Equipment

TRANSMITTER EQUIPMENT			
<u>TRANSMITTER LOCAL NAME</u>	<u>MANUFACTURER</u>	<u>MODEL</u>	<u>STATUS</u>
DTV ANTENNA SYSTEM			ACTIVE
43 WAVEGUIDE COMBINER	DIELECTRIC		ACTIVE
HARRIS DTV TV XMTR	HARRIS	DHD90P4	ACTIVE
MISCELLANEOUS SUTRO SITE EQUIPMENT	MISCELLANEOUS		

Other Tangible Personal Property

MASTER CONTROL EQUIPMENT			
<u>MCR LOCAL NAME</u>	<u>MANUFACTURER</u>	<u>MODEL</u>	<u>STATUS</u>
AES PATCH BAY	ADC	DAB407-4MKII	Active
SDI/HD PATCH BAY	ADC	PPI2226RS-SVJT-BK	Active
AJA-1 FRAME SYNC	AJA VIDEO SYSTEMS	FS-1	Active
AJA-2 FRAME SYNC	AJA VIDEO SYSTEMS	FS-1	Active
SUNDANCE AUTOMATION	AVID	Titan	Active
KVM #1	AVOCENT	AMX 5130	Active
KVM #10	AVOCENT	AMX 5130	Active
KVM #2	AVOCENT	AMX 5130	Active
KVM #3	AVOCENT	AMX 5130	Active
KVM #4	AVOCENT	AMX 5130	Active
KVM #5	AVOCENT	AMX 5130	Active
KVM #6	AVOCENT	AMX 5130	Active
KVM #7	AVOCENT	AMX 5130	Active
KVM #8	AVOCENT	AMX 5130	Active

KVM #9	AVOCENT	AMX 5130	Active
KVM BASE STATION	AVOCENT	AMX 5010	Active
EVERTZ HD KEYER	EVERTZ	HD9625LGA-EAS Plus BP	Active
EVERTZ KBYER #1	EVERTZ	9625LGA Plus EAS	Active
EVERTZ KEYER #2	EVERTZ	9625LGA	Active
EVERTZ KEYER #3	EVERTZ	9625LGA Plus EAS	Active
EVERTZ KEYER #4	EVERTZ	9625LGA Plus EAS	Active
MONITOR WALL ENGINE - MC	EVERTZ	MVP	Active
DPS1 SYNCHRONIZER/TBC	LEITCH	DPS 575	Active
DPS2 SYNCHRONIZER/TBC	LEITCH	DPS 575	Active
MASSLOGGER	MASSTECH	ML-350-015	out of service
20 RACKS AND 30KFT WIRING	MIDDLE ATLANTIC / BELDEN		Active
MEDIAPORT 4CH 1	OMNEON	MIP-5322	Active
MEDIAPORT 4CH 2	OMNEON	MIP-5322	Active
MULTIPORT 1	OMNEON	PR-MIP-5501	Active
MULTIPORT 2	OMNEON	PR-MIP-5501	Active
OMNEON CONTROL SERVER	OMNEON	NCM 2003	Active
PROBROWSE PROXY GEN 1	OMNEON	MPB-1002-G	inactive
PROBROWSE PROXY GEN 2	OMNEON	MPB-1002-G	inactive
PROBROWSE SERVER	OMNEON	MPB-1001-HC	inactive
DVC PRO VCR 4	PANASONIC	AJ-SD930	Active
DVC PRO VCR 8	PANASONIC	AJ-SD930	Active
DVC PRO VCR	PANASONIC	SD255	inactive
DVC PRO VCR	PANASONIC	SD255	inactive
DVC PRO VCR	PANASONIC	SD255	inactive
XD CAM VCR	SONY	PDWHD1500	Active
HD CAM VCR	SONY	HDW-1800	Active
DIGIBETA VCR	SONY	DVW-M2006	Active
MULIT MONITOR (MANY)	WOHLER/MARSH ALL		Active
RACK MT	PANASONIC		Active

MONITORS(3)			
19" MONITORS (MANY)	SAMSUNG		Active
DEKOCAST C	PINNACLE	DEKOCAST	Active
DVD RECORDER	PIONEER	PRV-LX1	inactive
SENCORE ATLAS IRD	SENCORE	MRD 3187A	Active
SENCORE ATLAS IRD	SENCORE	MRD 3187A	Active
SENCORE ATLAS IRD	SENCORE	MRD 3187A	Active
IRD A	THOMSON	RX8200	Active
IRD B	THOMSON	RX8200	Active
IRD C	THOMSON	RX8200	Active
IRD D	THOMSON	RX8200	Active
IRD E	THOMSON	RX8200	Active
IRD F	THOMSON	RX8200	Active
SYNCHRONIZER	SNELL & WILCOX	TBS 180AV	Active
DIGI BETA	SONY	DVWM2000	Active
QC2 MONITOR	SONY	BVM-D20F1U	Active
QC3 MONITOR	SONY	BVM-D20F1U	inactive
MULTIPLEXER (2)	TANDBERG	M2/MUXMX5 620	Active
SD ASI RECEIVER #1	TANDBERG	TT1260/DIRB AS	Active
SD ASI RECEIVER #2	TANDBERG	TT1260/DIRB AS	Active
SD ASI RECEIVER #3	TANDBERG	TT1260/DIRB AS	Active
SD ENCODER #1	TANDBERG	M2/ENC/E571 0/ATSC	Active
SD ENCODER #2	TANDBERG	M2/ENC/E571 0/ATSC	Active
SD ENCODER #3	TANDBERG	M2/ENC/E571 0/ATSC	Active
SD ENCODER #4	TANDBERG	M2/ENC/E571 0/ATSC	Active
JUPITER CONTROL SYSTEM	THOMSON	Jupiter	inactive
ROUTER CNTRL PANELS(4)	THOMSON	Various	Active
SI-1	THOMSON	SI-3000C	Active
SI-2	THOMSON	SI-3000C	Active
TRINIX ROUTER	THOMSON	Trinix DV33128	Active
VENUS ROUTER	THOMSON	Venus	Active

VM-1	THOMSON	VM-3000C	Active
QC1 AUDIO	WOHLER	AMP1-DA	Active
QC2 AUDIO	WOHLER	AMP1-DA	Active
WAVEFORM MONITOR	TEKTRONIX	7120	Active
WAVEFORM RASTERIZER	TEKTRONIX	7020	Active
<u>PRODUCTION LOCAL NAME</u>	<u>MANUFACTURER</u>	<u>MODEL</u>	<u>STATUS</u>
BATTERY BELT #1	ANTON BAUER	30/13	ACTIVE
BATTERY BELT #2	ANTON BAUER	30/13	ACTIVE
DIONIC 90 #3	ANTON BAUER	Dionic 90	out of service
DIONIC 90 #4	ANTON BAUER	Dionic 90	out of service
DIONIC 90 #5	ANTON BAUER	Dionic 90	out of service
DIONIC 90 #6	ANTON BAUER	Dionic 90	out of service
QUAD 2702 POWERCHARGER	ANTON BAUER	Quad 2702	out of service
JOKER NEWS COMBO KIT	K5600	K0200/400JBN DOUB+3	ACTIVE
FIELD MIXER	SHURE	FP32A	ACTIVE
FIELD MIXER	SHURE	M67	INACTIVE
FIELD MONITOR	SONY	PVM-8041Q	ACTIVE
Aspect ratio converter	Picolink		Active
XDCAMHD CAMCORDER	SONY	PDWF-335L	ACTIVE
FIELD CAMERA ZOOM CONTROL	CANON	ZSG-200M	ACTIVE
XDCAM WIDE ANGLE LENS	CANON	KH10EX3.6B IRSE	ACTIVE
XDCAM ZOOM LENS	CANON	KH21EX5.7 IRSE SX12	ACTIVE
TRIPOD SYSTEM	Vinten	Vision 10	ACTIVE
TRIPOD SYSTEM (matte box)	O'CONNOR	50	ACTIVE
MATTE BOX	VOCAS	MB-325	ACTIVE
Lavalier Microphone	Sony	ECM- 66	Active
Lavalier Microphone	Sony	ECM- 66	Active
XDCAM HD DISC DRIVE	SONY	PDW-U1	Active

XDCAM HD DISC DRIVE	SONY	PDW-U1	Active
------------------------	------	--------	--------

Schedule 1.1(c)

Station Contracts

- ◆ Transmitter site lease between Sutro Tower, Inc. and San Mateo County Community College District dated January 16, 2003, as amended May 22, 2014, extended term through February 28, 2020 ("Sutro Lease").
- ◆ Repacking services agreement, Sutro Tower, Inc. and San Mateo County Community College District dated July 31, 2017, term concurrent with Sutro Lease.

- ◆ *Designates Station Contract requiring third party consent.*

Schedule 1.2(l)

Other Excluded Assets

The Rejected Personal Property.

Schedule 1.6
Unreimbursed Repacking Expenses

None.

Schedule 1.7

Additional Consideration

- 1. Television and Radio Announcements.** Beginning on the date of Closing and ending on the date five (5) years thereafter, Buyer shall make available to Seller, at no cost to Seller, on-air underwriting announcement spots of up to thirty (30) seconds in length on KRCB TV 22 and on KRCB FM RADIO 91. Each month Buyer shall produce one (1) announcement for Seller, based on copy provided by Seller, to describe to the Buyer's broadcast area (including but not limited to the San Francisco North Bay Region), its activities and initiatives for the benefit of Seller's alumni, prospective students and parents (the "Messages"). In the alternative, Seller may provide pre-produced announcement to Buyer in a manner and format reasonably acceptable to Buyer. Seller shall be responsible for scheduling the Messages with Buyer on a monthly use-it-or-lose-it basis, and for providing the copy or pre-produced announcements to Buyer at least fourteen (14) days prior to Seller's first desired broadcast date. Buyer will schedule five (5) monthly spot placements on KRCB TV 22 and ten (10) monthly spot placements on KRCB FM RADIO 91. Buyer shall run all Messages between the hours of 6 am and midnight local time on a run-of-schedule basis with approximately equal distribution across dayparts. Should Seller not elect to utilize any Messages by the end of any month, such unused Messages shall be forfeited and may not be carried forward to future months (and any order that is not timely placed by Seller shall be deemed used). Buyer will provide to Seller each month a written summary of when (date and time) the Messages aired on KRCB TV 22 and on KRCB FM RADIO 91 in the previous month, provided that Seller informs Buyer to whom and where this "proof-of-performance" documentation should be sent. The Messages shall conform to the regulations and policies applicable to noncommercial educational broadcasting, including public TV and radio industry standards, and Buyer shall have the right to preempt or reject any Message(s) and otherwise maintain control over the programming of the stations in order to comply with applicable laws (including without limitation FCC rules and regulations) and Buyer's standards and practices, which Buyer shall apply to the Messages on a uniform and non-discriminatory basis as compared to all other underwriting announcements broadcast by each respective station. Buyer shall make-good any preempted or rejected Messages subject to Seller timely providing make-good copy or pre-produced announcements. Notwithstanding anything in the Agreement or in this Schedule 1.7, Seller has no obligation make use of the Messages.
- 2. Student Internships.** At the beginning of the first semester (of Seller's student campuses) following the date of Closing, or another date mutually agreed upon by the parties, until three (3) years thereafter, pursuant to an appropriate internship site agreement between Seller and Buyer with provisions that are customary for community college student internships (but excluding any payments from Seller to Buyer), Buyer shall work with Seller to provide training, in the form of educational internships, at Buyer's studio and office location for up to six of Seller's students per

year (three (3) students per semester) working in Buyer's marketing, development, production, telecommunications, and social media departments. The objective of the training and educational internship program is to provide Seller's students with applicable working experiences that allow the Seller's students to learn and gain onsite training from Buyer's staff. Buyer and Seller agree to cooperate during the three (3) year period in designing and implementing the actual educational internship program. Buyer and Seller will mutually agree on the number of hours the students will work on a weekly basis and the number of weeks per year that the training and educational internship will be offered. Transportation to and from Buyer's studio and office location is the responsibility of the individual students and/or the Seller's educational program. Each year Buyer and Seller will review and evaluate the established educational internship program to consider whether operational and content modifications are necessary and appropriate. The educational internships training shall be unpaid, unless the nature and scope of the responsibilities performed is appropriate for paid services, as determined by Buyer in its reasonable good-faith discretion, in which case Buyer shall make payment for such services. In the first year of the student training pursuant to this Agreement, Buyer and Seller will make reasonable efforts to establish and be operational with the training and educational internship program on or before six (6) weeks prior to the commencement of the first semester. Notwithstanding anything in the Agreement or in this Schedule 1.7, Seller shall have no obligation to make use of the student internships.

3. **Carriage of KCSM(FM) video channel via TV Digital Broadcast.** Beginning at the Closing, and for five (5) years thereafter, Buyer will maintain carriage of the KCSM(FM) video channel as broadcast on the Station as of the Effective Date (the "**KCSM(FM) Stream**"). Carriage of the KCSM(FM) Stream shall in all cases be consistent with FCC requirements for noncommercial educational stations and Sections 73.503 and 73.621 of the FCC rules. Buyer's retransmission of the KCSM(FM) Stream will include the slide show featuring the Jazz Datebook, community events and Jazz Trivia substantially as they are carried as of the Effective Date, provided that Seller continues to produce and furnish such features to Buyer. Seller shall be responsible for providing the KCSM(FM) Stream to Buyer via a technological solution in an ASI encoded format that the Buyer, in its reasonable discretion, deems appropriate for integration into the Station's multi-channel digital stream. Seller shall be solely responsible for the costs of production and encoding of the KCSM(FM) Stream, for the costs of providing the KCSM(FM) Stream to Buyer, and for the content of the KCSM(FM) Stream, and shall obtain and maintain commercially reasonable media perils insurance for Buyer's broadcast of the KCSM(FM) Stream with such insurance including Buyer as an additional named insured. Buyer, at its sole discretion, shall have the exclusive right to preempt or reject any specific programming of the KCSM(FM) Stream if Buyer, in its reasonable judgment, concludes that such programming does not serve the public interest, or that alternate programming or alternative program scheduling, would better address local needs. As between the parties, all right, title and interest in and to the KCSM(FM) Stream, and the right to authorize the use of the KCSM(FM) Stream in any manner and in any media whatsoever, shall be and remain vested at all times solely in Seller.

Seller shall secure, at its sole cost and expense, any rights licenses that might be necessary for the transmission of the KCSM(FM) Stream over the Station.

Notwithstanding anything in the Agreement or in this Schedule 1.7, Seller shall have no obligation to continue providing the KCSM(FM) Stream to Buyer and Seller does not grant any rights to Buyer with respect to the KCSM(FM) Stream.

4. **Local Programs.** Each month during the five (5) year period immediately following Closing, Buyer will broadcast on its primary (.1 or equivalent) channel up to thirty (30) minutes per month of Seller-produced video programming (each, a "Local Program") in a timeslot of Buyer's choice in pre-prime or on weekends. Seller will give notice of its intent to provide a Local Program and its total run time at least two (2) months in advance of the calendar month in which it intends to provide such Local Program (e.g., Seller will give notice no later than September 30 with respect to Local Program to air in December). Each Local Program must be delivered to Buyer no later than one (1) month in advance of the calendar month in which Seller wishes the Local Program to air. Local Programs must adhere to FCC requirements for non-commercial stations, comply with Buyer's reasonable technical standards, and be delivered by Seller to Buyer in a mutually agreeable manner. Buyer, at its sole discretion, shall have the right to preempt or reject any Local Program provided by Seller if Buyer, in its reasonable judgment, concludes that such Local Program does not serve the public interest, or that alternate programming would better address local needs. Notwithstanding anything in the Agreement or in this Schedule 1.7, Seller shall have no obligation to provide any Local Program or to make use of the rights granted to Buyer herein.

Schedule 2.10

Seller Litigation

Seller has sued LocusPoint Networks, LLC, LocusPoint II KCSM, LLC and PricewaterhouseCoopers Advisory Services LLC, and LocusPoint Networks, LLC and LocusPoint II KCSM, LLC have sued Seller, in Superior Court of the State of California, County of San Mateo, in each case raising claims arising out of a series of agreements between LocusPoint Networks, LLC and Seller regarding a potential sale of Station in the FCC's broadcast incentive auction. *See San Mateo County Community College District, et al vs. LocusPoint Networks, LLC, ET. AL.*, 17-CIV-01534; *LocusPoint Networks, LLC, et al vs. San Mateo County Community College District*, 17-CIV-01550. LocusPoint Networks, LLC has asserted to Seller that it believes those same agreements give LocusPoint Networks, LLC the right to block the sale of Station at this time. Seller disputes LocusPoint Networks, LLC's assertions for a number of reasons, including without limitation that LocusPoint Networks, LLC materially breached the agreements such that the provisions LocusPoint Networks, LLC has stated it relies upon for its assertions no longer bind Seller, and because any security interest LocusPoint Networks, LLC may hold is limited to the proceeds of the sale of certain assets used in the operation of the Station and does not extend to the assets themselves.



McGovern ESCROW SERVICES

22 Battery Street, Suite 914, San Francisco, CA, 94111
 Telephone: 415.735.3645 * Facsimile: 415.358.5732

This Escrow Company holds California Department of Business Oversight Escrow License No. 9635091

Escrow No. 100895

ESCROW INSTRUCTION AND AGREEMENT

This Escrow Instruction and Agreement ("Instruction") dated September 22, 2017, shall not be binding on McGovern Escrow Services, Inc. ("Escrow Agent") until acknowledged and executed by all persons identified as principals herein.

This Agreement is entered into by and between SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT, a California Community College District ("Seller"), RURAL CALIFORNIA BROADCASTING CORPORATION, a California non-profit and nonstock corporation ("Buyer"), and the Escrow Agent. Seller and Buyer are sometimes referred to collectively as the "Parties, and each individually is a "Party".

WHEREAS, Seller and Buyer have entered into an Asset Purchase Agreement dated September 22, 2017 the ("Agreement").

WHEREAS, under the terms of the Agreement the Seller desires to sell and assign to Buyer, and Buyer wishes to buy and take assignment of, certain assets of Seller and the FCC Licenses of that certain noncommercial educational television station known as KSCM-TV (the "Station"), under terms and conditions set forth in the Agreement.

WHEREAS, under the terms of the Agreement Buyer shall make a cash deposit, in immediately available funds, in the amount of Nine Hundred Sixty Thousand and No/100US (\$960,000.00).

NOW, THEREFORE, the Parties desire to establish an escrow account in which \$960,000.00 (the "Escrow Funds") will be deposited hereto by Buyer.

1. Deposit of Funds

On or before September 22, 2017 (the "Closing Date"), Buyer shall cause to be deposited hereto the Escrow Funds.

The Escrow Funds are to be deposited in the form of a wire transfer payable to McGovern Escrow Services, Inc., Escrow No. 100895.

- a. Upon receipt of the Escrow Funds that have been deemed collected, the Escrow Agent is instructed to invest the Escrow Funds in one or more federally insured, interest bearing account. All interest accrued on the Escrow Funds shall be credited to Rural California Broadcasting Corporation for taxation purposes and reported as such.

Escrow No. 100895

- b. Concurrent with the execution of this Escrow Agreement, Buyer shall deliver to escrow:
 - i. A copy of the Certificate of Incorporation as filed with the California Secretary of State, and a Resolution designating signing authority for the corporation.
 - ii. Customer Identification form from the officers and/or any other signing authority of Buyer as required for bank interest bearing account purposes.
 - iii. IRS form W-9, Request for Taxpayer Identification Number and Certification from Rural California Broadcasting Corporation.

2. Disbursement of Funds

On or before three (3) business days prior to the Closing as defined in the Agreement, or three (3) business days prior to any other disbursement of Escrow Funds, Seller and Buyer shall submit to escrow mutual written instruction as to:

- a. Any and all prorations and adjustments to be made between the Parties, and
- b. The disbursement of the Escrow Funds to Seller and the accrued interest to Buyer, or
- c. Any other disbursement of the Escrow Funds as contemplated in the Agreement.

3. Obligation to Disburse

Notwithstanding any provision to the contrary herein (or in the General Provisions attached), Escrow Agent shall effect the delivery and disbursement of the Escrow Property as set out in Section 2. within three (3) business days of receipt of the required authorization and instruction from the Parties.

4. Duties of Escrow Agent

Escrow Agent will not be liable for actions or omissions hereunder, except for its own gross negligence, bad faith or willful misconduct and, except with respect to claims based upon such gross negligence, bad faith or willful misconduct, such actions or omissions as are successfully asserted against Escrow Agent. Buyer and Seller shall jointly and severally indemnify and hold harmless Escrow Agent (and any successor Escrow Agent) from and against any and all losses, liabilities, claims, actions, damages and expenses, including reasonable attorney's fees and disbursements, arising out of and in connection with this Agreement. Without limiting the foregoing, Escrow Agent will in no event be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with any written notice of Buyer delivered to Escrow Agent in accordance with this Agreement. Each of Buyer and Seller hereby releases, waives, discharges and covenants not to sue the Escrow Agent for any action taken or omitted to be taken under this Agreement except to the extent caused by Escrow Agent's gross negligence, bad faith or willful misconduct.

5. Termination of Escrow

- a. The date of termination is upon the distribution of the Escrow Property pursuant to this Agreement; provided, however, in the event any funds remain in the account on the first (1st) anniversary of the date of these escrow instructions and Agreement, these escrow instructions and Agreement shall be renewed on an annual basis until all such funds are disbursed subject to the terms of Section 5.(b) below.

- b. Should Escrow Agent at any time and for any reason desire to be relieved of its obligations as escrow holder hereunder, the Escrow Agent shall give written notice of its desire to be relieved to the Parties. The Parties shall, within (30) days of the receipt of such notice, appoint a successor escrow agent and instruct Escrow Agent to deliver the Escrow Funds hereunder to the successor escrow agent. If Escrow Agent is not notified of the appointment of a successor escrow agent within sixty (60) days of its transmission of notice under this Section, Escrow Agent shall hold the Escrow Funds until: (i) it receives the authorization and instruction described in Section 2; (ii) it receives a court order instructing it to disburse the Escrow Funds; or (iii) it files a suit in interpleader and deposits Escrow Funds with the court.

6. Independent Review

The Parties have made their own determination as to whether the language in this Instruction memorialize their own respective Agreement, are not usurious, and/or come under any consumer protection laws. McGovern Escrow Services, Inc. makes no representations or warranties with respect to the terms and conditions of the Agreement. The Parties further represent and warrant that each has received sufficient information, either through said party's own legal counsel or other sources of said party's own selection, so as to be able to make an intelligent and informed judgment whether to enter into the Agreement, along with this Escrow Instruction and Agreement. Each undersigned party further state that each has read the document(s) in their entirety prior to executing each such document, and that each has executed the documents voluntarily, with competence and capacity to contract and with the knowledge of the terms significance and legal effect of each such document.

7. The Asset Purchase Agreement

This Escrow Instruction is executed for the purpose of enabling the Escrow Agent to complete this transaction, but is in no way intended to modify, amend, supersede or in any way change the Asset Purchase Agreement, dated September 14, 2017 and entered into prior to this Escrow Instruction and Agreement. Escrow Agent is not a party to and is not to be concerned with said Agreement or any matters contained therein, and is responsible only for such matters as are specifically set out in these instructions.

8. Invalidity Provision

Should any provision of this Agreement be found invalid, such invalidity shall not in any way affect the remaining provision of this Agreement.

9. Assignment

This Parties hereto shall not assign any of its rights or delegate any of this duties under this Agreement without prior written consent of the other party and any unauthorized assignment or delegation shall be void and of no effect.

Escrow No. 100895

Escrow No. 100895

10. Notices

All notices, requests, consents and other communications hereunder to any party pursuant to this Note will be deemed to be sufficient if contained in a written instrument delivered personally or mailed by certified or registered mail postage prepaid or sent electronically by confirmed email transmission, addressed as set forth below, or to such other address as may hereinafter be designated in writing by the recipient to the sender pursuant to this Section 10. Any such notice shall be effective (i) when personally delivered, (ii) one (1) business day after it has been deposited with a nationally-recognized overnight courier, duly addressed and postage prepaid, (iii) two (2) business days after it has been deposited in the United States mail, duly addressed and postage prepaid, or (iv) on the business day of confirmed transmission by facsimile or email. Any party may change such party's address for notice by written notice to the other parties pursuant to the provisions of this Section 10.

To Seller:

San Mateo Community College District
3401 CSM Drive
San Mateo, CA 94402
Attn: Executive Vice Chancellor
Email: blackwoodk@smccd.edu

To Buyer:

Rural California Broadcasting Corporation
5850 Labath Avenue
Rohnert Park, CA 94928
Attn: Nancy Dobbs, President and CEO
Email: nancy_dobbs@krbc.org

To McGovern Escrow Services, Inc:

Ms. Elizabeth McGovern
McGovern Escrow Services, Inc.
22 Battery Street, Suite 914
San Francisco, Ca 94111
Email: elizabeth@mcgovernescrow.com

11. Compensation

Funds for the payment of escrow fees and charges shall be exclusively paid by Buyer and Seller as described in the attached Escrow Fee schedule ("Exhibit A").

12. Amendment of Escrow

This Agreement may not be amended except in writing, executed by the Parties and the Escrow Agent. This Agreement may be executed in counterparts, each of which so executed shall be deemed an original, irrespective of the date of execution and delivery, and the counterparts shall constitute one and the same document.

Escrow No. 100895

13. Governing Law and Assignment

This Agreement shall be construed in accordance with and governed by the laws of the State of California and shall be binding upon the parties hereto and their respective successors, heirs, personal representatives and permitted assigns; provided, however, that any assignment or transfer by any party of its rights under this Agreement or with respect to the Escrow Funds shall be void as against the Escrow Agent unless (a) written notice thereof shall be given to the Escrow Agent; and (b) the Escrow Agent shall have consented in writing to such assignment or transfer.

14. Court Orders

Escrow Agent is hereby authorized, in its exclusive discretion, to obey and comply with all final and non-appealable writs, orders, judgments or decrees issued by any court or administrative agency affecting any money, documents or other assets or items held by Escrow Agent. Escrow Agent shall not be liable to any of the Parties hereto, their successors, heirs or personal representatives by reason of Escrow Agent's compliance with such writs, orders, judgments or decrees.

15. USA Patriot Act Notice

The Escrow Agent notifies the Parties hereto that pursuant to the requirements of the USA Patriot Act (Title II of Pub. L. 107-56, signed into law October 26, 2001) (the "Act"), the Escrow Agent is required to obtain, verify and record information that identifies the Parties to this Instruction and Agreement, which information includes the name and address of the Parties and other information that will allow Escrow Agent to identify them in accordance with the Act.

Escrow No. 100895

EXHIBIT A

Escrow Fee Agreement

In consideration for complying with the Escrow Instruction and Agreement dated September 22nd 2017, Pacific Retirement Services, Inc. agrees to pay all applicable fees to McGovern Escrow Services, Inc., as detailed below:

\$3,000.00	Escrow Set-Up and Documentation Fee (Due upon execution and delivery of the Escrow Instruction and Agreement)
25.00	Check disbursement fee per instrument
30.00	Wire transfer fee per event
150.00	Account reconciliation reports, as requested
350.00	Annual Maintenance Fee

Agreed and authorized by:

SELLER:
San Mateo County Community College District,
A California Community College District

Signature: *Thomas C. Walker*

Date: 22 Sept. 2017

Signature: _____

Date: _____

BUYER:
Rural California Broadcasting Corporation
a California non-profit and nonstock
corporation

Signature: _____

Date: _____

Signature: _____

Date: _____

Escrow No. 100895

EXHIBIT A

Escrow Fee Agreement

LRS

22

In consideration for complying with the Escrow Instruction and Agreement dated September 10, 2017, Pacific Retirement Services, Inc. agrees to pay all applicable fees to McGovern Escrow Services, Inc., as detailed below:

\$3,000.00	Escrow Set-Up and Documentation Fee (Due upon execution and delivery of the Escrow Instruction and Agreement)
25.00	Check disbursement fee per instrument
30.00	Wire transfer fee per event
150.00	Account reconciliation reports, as requested
350.00	Annual Maintenance Fee

Agreed and authorized by:

SELLER:
San Mateo County Community College District,
A California Community College District

BUYER:
Rural California Broadcasting Corporation
a California non-profit and nonstock
corporation

Signature: _____

Signature: [Handwritten Signature]

Date: _____

Date: 9/10/17

Signature: _____

Signature: [Handwritten Signature]

Date: _____

Date: 9/10/17


Escrow No. 100895

EXHIBIT B

In accordance with this Escrow Instruction and Agreement dated September 20th 2017, the names of the persons who are authorized to give written instructions on behalf of each of the Parties hereof, and exemplars of their respective signatures are as follows:

SELLER:

San Mateo County Community College District,
A California Community College District



Signature

Printed Name
Thomas Mohr

Title
President, Board of Trustees
Signature

Printed Name

Title

Number of signatures required: 1

BUYER:

Rural California Broadcasting Corporation
a California non-profit and nonstock
corporation

Signature

Printed Name

Title

Signature

Printed Name

Title

Number of signatures required: _____

Escrow No. 100895

EXHIBIT B

22

LRS

In accordance with this Escrow Instruction and Agreement dated September ~~1~~ 2017, the names of the persons who are authorized to give written instructions on behalf of each of the Parties hereof, and exemplars of their respective signatures are as follows:

SELLER:

San Mateo County Community College District,
A California Community College District

Signature

Printed Name

Title

Signature

Printed Name

Title

Number of signatures required: _____

BUYER:

Rural California Broadcasting Corporation
a California non-profit and nonstock
corporation

Nancy Dobbs

Signature

NANCY DOBBS

Printed Name

President

Title

Laurence R. Stratton

Signature

LAURENCE R STRATTON

Printed Name

C.E./CEO

Title

Number of signatures required: ONE (1)

Escrow No. 100895

GENERAL PROVISIONS

1. **DEPOSITS.** All funds received in escrow shall be deposited with other escrow funds in a non-interest bearing general escrow account or accounts of McGovern Escrow Services, unless otherwise instructed in writing.
2. **OTHER AGREEMENTS.** Unless otherwise specifically provided herein in writing, Escrow Agent is not to be required to read, understand, interpret, or be concerned in any manner whatsoever with any conditional sales contract, purchase agreement, lease contract, security agreement, or other agreement, written or oral, of any kind whatsoever, and is not responsible for the delivery of any papers other than described herein. Escrow Agent is not a party to, or bound by any agreement which may be deposited under, evidenced by, or which may arise out of these instructions.
3. **AGENCY RESPONSIBILITIES.** Escrow Agent is to make no examination of the property being transferred herein or of the condition of or the title thereto. Escrow Agent acts as a depository only and is not responsible or liable in any manner whatever for sufficiency, correctness, genuineness or validity of any instrument deposited with it hereunder, or with respect to the form or execution of the same, or the identity, authority, or right of any person executing or depositing the same.
4. **DEFAULTS.** Escrow Agent shall not be required to take or be bound by notice of any default of any person, or take any action with respect to such default involving any expense or liability, unless notice in writing is given to the Escrow Agent at the address set forth above, of such default by the undersigned or any of them, and unless Escrow Agent is indemnified in a manner satisfactory to it against any and all expense and liability.
5. **NOTICES.** Escrow Agent shall be protected acting upon any notice, request, waiver, consent, receipt or other paper or document reasonably believed by Escrow Agent to be signed by the property party or parties.
6. **JUDGMENT.** Escrow Agent shall not be liable for any error of judgment or for any act done or step taken or omitted by it in good faith or for any mistake or fact of law, or for anything which it may do or refrain from doing in connection herewith, except its own gross negligence or willful misconduct, and Escrow Agent shall have no duties to anyone except those signing these instructions.
7. **COUNSEL.** Escrow Agent may advise with legal counsel of its choice in the event of any dispute or question as to the construction of these instructions, or Escrow Agent's duties hereunder and Escrow Agent shall incur no liability and shall be fully protected in acting in accordance with the opinion and instructions of its counsel. Further, the parties hereto shall reimburse Escrow Agent for the costs, expenses and attorney's fees incurred by Escrow Agent for such advice and counsel. Escrow Agent is hereby authorized to deduct Seller and Buyer portion of such costs, expenses and attorneys fees from any funds held in escrow.
8. **DISAGREEMENTS.** In the event of any disagreement between the undersigned or any of them, and/or the persons named in these instructions, and/or any other person, resulting in adverse claims and demands being made in connection with or for any papers, money or property involved herein or affected hereby, Escrow Agent shall be entitled at its option to refuse to comply with any such claim or demand, as long as such disagreements shall continue, and in so doing Escrow Agent shall not be or become liable for damages or interest to the undersigned or any of them or to any person for its failure or refusal to comply with such conflicting or adverse demands, and Escrow Agent shall be entitled to continue to refrain and refuse to act until:
 - a.
 1. The rights of the adverse claimant had been finally adjudicated in a court assuming and having jurisdiction of the parties and the money, papers and property involved herein or affected hereby and/or
 2. All differences shall have been adjusted by agreement and Escrow Agent shall have been notified thereof in writing signed by all of the persons interested.
 - b. Notwithstanding the foregoing, however, in the event of any such disagreement, Escrow Agent in its sole discretion may (a) file a suit in interpleader for the purpose of having the respective rights of the claimants adjudicated, and then deposit with the court all documents and property held hereunder, and the Parties agree to pay all costs and expenses incurred by Escrow Agent in such action, including attorneys fees, and such costs and expenses shall be included in the judgment in any such action or

Escrow No. 100895

- (b) submit the matter to the American Arbitration Association, who will name a single arbitrator to conduct an arbitration in San Francisco, California to determine the respective rights of claimants in accordance with the Commercial Arbitration Rules of the American Arbitration Association. All costs and expenses, including attorney's fees incurred with respect to the arbitration by Escrow Agent shall be paid by the Parties in equal proportions. The arbitration award shall be final and without appeal. A judgment upon the award may be entered in any court having jurisdiction of the parties.
9. **INDEMNITY.** In consideration of acceptance of this appointment by Escrow Agent, the Parties agree to defend, indemnify and hold Escrow Agent harmless as to any liability incurred by Escrow Agent to any person, firm or corporation by reason of its having accepted same or in carrying out any of the terms hereof, and to reimburse Escrow Agent for all its expenses, including among other things, counsel fees and court costs incurred by reason of its position or actions taken pursuant to these Escrow Instructions. Subject to Section 4 of the Agreement, the Principals hereby agree that the Escrow Agent shall not be liable to any of them for any action taken by Escrow Agent pursuant to and authorized by the terms hereof.
 10. **COURT ORDERS.** Escrow Agent is hereby authorized in its exclusive discretion, to obey and comply with all writs, orders, judgments or decrees issued by any court or administrative agency affecting any money, documents or other securities or writings held by Escrow Agent. Escrow Agent shall not be liable to any of the parties hereto, their successors, heirs or personal representatives, by reason of Escrow Agent's compliance with such writs, orders, judgments or decrees. Notwithstanding such writ, order, judgment or decree is later reversed, modified, set aside or vacated.
 11. **USURY.** Escrow Agent is not to be concerned with any question or usury in the processing of this escrow and Escrow Agent is hereby released of any responsibility or liability therefore.
 12. **AMENDMENTS TO ESCROW INSTRUCTIONS.** These instructions shall not be subject to rescission or modification except by receipt by Escrow Agent at the address above of written instructions signed by all of the parties hereto or their successors in interest and no such modification shall be effective unless and until consented to in writing by Escrow Agent.
 13. **SIGNATURES.** These instructions may be executed in counterparts, each of which so executed shall be deemed as an original, irrespective of the date of its execution and delivery; and such counterparts together with shall constitute one and the same instrument.
 14. **COMPLETE AGREEMENT.** These instructions constitute the complete agreement between the Parties and Escrow Agent, with respect to the subject matters referred to in these instructions. These instructions supersede all prior contemporaneous negotiations, promises, covenants, agreements and representations of every nature whatsoever with respect to the subject matters referred to in these instructions, all of which have become merged and finally integrated into these instructions. Each of the parties understands that in the event of any subsequent litigation, controversy or dispute concerning any of the terms, conditions or provisions of these instructions, no party shall be permitted to offer or to introduce any oral evidence concerning any oral promises, agreements, representations or statements relating to the subject matters of these instructions not set forth herein in writing.
 15. **SEVERABILITY.** In case any provision in these instructions shall be invalid, illegal or unenforceable, such provision shall be severable from the remainder of these instructions, and the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
 16. **APPLICABLE LAW.** These instructions and the rights and obligations of the parties thereto shall be governed by the laws of the State of California.

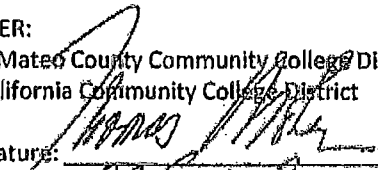
Escrow No. 100895

- 17. **SURVIVAL OF REPRESENTATION.** All representations and warranties set forth herein shall survive the closing of escrow.
- 18. **BINDING OF SUCCESSORS.** The parties intend that these instructions will be binding upon and for the benefit of the parties hereto and their respective successors and assigns.

The Parties each hereby state that they have read the foregoing Escrow Instruction and Agreement, understand and agree to it, and acknowledge receipt of a copy of it.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of this 22nd day of September, 2017.

SELLER:
 San Mateo County Community College District
 A California Community College District

Signature: 

Date: 22 Sept 2017

BUYER:
 Rural California Broadcasting Corporation
 a Ca non-profit and nonstock corporation

Signature: _____

Date: _____

McGovern Escrow Services, Inc. a California corporation

By: _____
Elizabeth McGovern, President

Escrow No. 100895

- 17. **SURVIVAL OF REPRESENTATION.** All representations and warranties set forth herein shall survive the closing of escrow.
- 18. **BINDING OF SUCCESSORS.** The parties intend that these instructions will be binding upon and for the benefit of the parties hereto and their respective successors and assigns.

The Parties each hereby state that they have read the foregoing Escrow Instruction and Agreement, understand and agree to it, and acknowledge receipt of a copy of it.

2ND LRS

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of this ~~10th~~ day of September, 2017.

SELLER:
San Mateo County Community College District
A California Community College District

BUYER:
Rural California Broadcasting Corporation
a Ca non-profit and nonstock corporation

Signature: _____

Signature: *[Handwritten Signature]*

Date: _____

Date: *9/10/2017*

McGovern Escrow Services, Inc. a California corporation

By *[Handwritten Signature]*
Elizabeth McGovern, President