



**SAN MATEO COUNTY  
COMMUNITY COLLEGE DISTRICT**

**San Mateo County Community College District  
Request for Proposal 86656**

**Sale of KCSM-TV**

**Issued: December 20, 2012**

**Pre-Bid Meeting: January 15, 2013, 1 p.m. PST**

**Proposals due: February 20, 2013, 2 p.m. PST**

Return Proposal To:  
Department of General Services  
District Office  
3401 CSM Drive  
San Mateo, California 94402  
Telephone (650) 574-6508 FAX (650) 574-6574  
Email [districtbids@smccd.edu](mailto:districtbids@smccd.edu)

## **Executive Summary**

This Request for Proposal (RFP) presents an opportunity for qualified entities (hereinafter “Bidder”) to either (1) acquire from the San Mateo County Community College District the assets of KCSM-TV, a full power non-commercial UHF transmission facility licensed by the Federal Communications Commission (FCC) and to take assignment of the station licenses or (2) enter into an arrangement whereby Bidder would subsidize continued operation of KCSM-TV by the District and participate in some capacity with the District in offering the KCSM-TV spectrum for surrender in the “reverse auction” contemplated by the FCC.

KCSM-TV operates as an independent public television station in the San Francisco-San Jose-Oakland Nielsen Designated Market Area (DMA), the 6<sup>th</sup> largest market in the United States. The KCSM-TV signal reaches close to six million television viewers from a transmission site at Sutro Tower in San Francisco. KCSM-TV is carried on most cable systems (on Channel 17) in the eight Bay Area counties. KCSM-TV is also carried on EchoStar’s Dish Network (Channel 60) and DirecTV (Channel 43). The District is primarily an educational organization and believes its mission of serving its students can be better served by concentrating on its core educational programs and no longer owning, operating, and financing a television station.

Because of the unique nature of this offering, the District will evaluate the best bid for KCSM-TV based on either the price for a sale or the value of the total package for a cooperative arrangement looking towards the FCC reverse spectrum auction. For a sale, the District will independently evaluate whether the Bidder will qualify under FCC rules to take assignment of the KCSM-TV license and how long it might take to get FCC approval. The District will factor into the price any savings that it may incur by a sale to a Corporation for Public Broadcasting (CPB) qualified organization that is willing to accept the transfer of the equipment purchased by the District under the terms of CPB Digital Distribution Funds grants that require equipment being kept and maintained in service for 10 years by a qualified Station operator. The value of such savings will include only the current depreciated value of that equipment as identified by CPB. For a cooperative arrangement looking towards subsidization of operations and the reverse auction, the District will consider the extent and nature of the subsidization, the proposed auction arrangements, and the provision for the contingency that the spectrum is not successfully sold at auction.

A Bidder proposing to buy KCSM-TV must be qualified under the FCC’s rules to hold a non-commercial license. Prospective Bidders should consult their own FCC counsel regarding the exact nature of the FCC’s requirements, which include, among other criteria, whether the licensee’s Board of Directors is representative of the local community.

### **Dates and Timeframes:**

- |   |                        |
|---|------------------------|
| • Issuance of Request for Proposal                  | December 20, 2012      |
| • Optional Pre-Bid Meeting at KCSM                  | January 15, 2013       |
| • Deadline for Submission of Proposals              | February 20, 2013      |
| • Finalist Meeting with District Staff as Necessary | Week of March 18, 2013 |
| • Expected Date for Board Approval of Sale          | April 24, 2013         |

## I. Request for Proposal Instructions and Requirements

All prospective Bidders interested in submitting a response to this Request for Proposal (RFP) are encouraged, but not required, to submit by January 11, 2013 an email notification to [districtbids@smccd.edu](mailto:districtbids@smccd.edu) indicating their intent to respond. The optional Pre-bid Meeting to be held on January 15, 2013 will include a briefing and a station tour. Prospective bidders interested in just the briefing and who wish to attend by conference call may email a request to [districtbids@smccd.edu](mailto:districtbids@smccd.edu) at least 24 hours in advance in order to receive by return email the call-in telephone number.

### General

Bidders must comply with the provisions of these instructions for completion and submission of the Proposal. The failure of a Bidder to comply with the Request for Proposal Instructions and Requirements may result in rejection of the Bidder's Proposal for non-responsiveness.

#### 1. Responsible Bidder Proposal

Only Proposals submitted by Bidders with the relevant experience, qualifications and capacity to meet the needs of the District will be accepted. A "responsible Bidder" is a Bidder that has the financial resources, personnel, integrity, and overall capacity to consummate the contract successfully. A "responsible proposal" is a Proposal that meets all of the terms, conditions, and specifications of the Request for Proposal.

The District reserves the right to reject any or all proposals, to accept or to reject any one or more items on a proposal, or to waive any irregularities or informalities in the Proposal or in the Request for Proposal process. The District reserves the right to proceed or not to proceed with this RFP, based solely on the determination of the District to terminate the selection process at any time.

#### 2. Preparation of Proposal

**Submission of Executed "Hard Copy".** Bidders interested in this opportunity must submit three copies of the Bidder's Proposal in typewritten or equivalent format, answering the questions and completing the form(s) that are furnished. Mistakes may be crossed out and corrections entered adjacent thereto and such corrections must be initialed in ink by the person signing the Proposal. Please deliver the proposal documents in a sealed envelope addressed to the Department of General Services, San Mateo County Community College District located at 3401 CSM Drive, San Mateo, CA 94402. Please indicate "**RFP 86656 Enclosed**" on the lower left corner of the envelope. The Proposal must be received *on or before 2:00 p.m. PST* on February, 20, 2013. Postmarking alone prior to this time is not sufficient. Faxed proposals or proposals sent via electronic mail will not be accepted. Failure to meet the deadline will result in disqualification of the proposal without review.

**Proposal Contents:** Proposals must include answers to all questions and include the following items, all of which must be submitted concurrently and executed as required by these Request for Proposal Instructions or by the form of document:

- Proposal cover letter on Bidder letterhead
  - Appendix A: Bidder signatory page
  - Appendix B: Non-collusion affidavit
  - Responses to all questions posed in Section II of Scope of Proposal
- a. **Questions:** Any questions regarding the information contained in this Request for Proposal must be submitted in writing via email to [districtbids@smccd.edu](mailto:districtbids@smccd.edu) no later than three (3) working days prior to Proposal due date of February, 20, 2013. Bidders may request clarifications or make other inquiries concerning this Request for Proposal or the requirements hereof. In your correspondence please include the Name of the Bidder, Street Address or P.O. Box Number, City, State, Zip Code, and Bidder's email and phone number contact information. Please note in the email "subject line" that this is "RE: KCSM-TV Sale RFP".

Communications with any representatives of the District about the sale of KCSM-TV by your firm or your firm's representatives concerning this RFP is not permitted during the term of the submission and evaluation process except as specified herein. Communications regarding this RFP in any manner (except as set forth above) will result in the immediate rejection of your firm's Proposal.

- b. **Bidder's Review of District Web Site:** All Bidders are required to review materials on the SMCCCD Purchasing web site ([www.smccd.edu/purchasing](http://www.smccd.edu/purchasing)) relating to this Request for Proposal prior to submission of a proposal. Any addendums, clarifications, Request for Proposal updates/revisions, or replies to specific questions will be posted on the web site. All web postings should be treated like all requirements set forth in this Request for Proposal. Bidders are responsible for incorporating these changes or addendums into their respective Proposals and all such matters shall be deemed incorporated into all Bidders' Proposals.
- c. **Copies of this Request for Proposal** can be obtained by visiting the SMCCCD Purchasing Department's Website at [www.smccd.edu/purchasing](http://www.smccd.edu/purchasing). Click on "Bid Announcements" and then "Current Bid Announcements".
- d. **Modifications to Submitted Proposal:** A Bidder submitting a Proposal may modify its submitted Proposal in writing, to be received by the District's Department of General Services at or prior to the deadline for submission of proposals. Modifications to the submitted Proposal that are not in writing may not be accepted and may not be deemed modifications to the submitted Proposal.

**3. Signature**

A legally authorized employee of the Bidder must sign the Proposal. Please refer to the "Bidder Information and Signatory Page" form (Appendix A). An unsigned proposal may be rejected for non-responsiveness.

**4. Non-Collusion Affidavit**

Each Bidder shall submit with its response a duly completed and executed form of the Non-Collusion Affidavit. The required form of the Non-Collusion Affidavit is included as Appendix B of this RFP. The failure of a Bidder to submit the completed and executed form of Non-Collusion Affidavit with its Proposal may result in rejection of the proposal for non-responsiveness.

**5. Evidence of Responsibility**

Upon the request of the District, a Bidder whose Proposal is under consideration shall promptly submit to the District satisfactory evidence showing the Bidder's financial resources and organization available for the performance of the contract. The failure of such a Bidder to submit requested materials in a timely manner will result in rejection of the Bidder's Proposal for non-responsiveness.

**6. District Modifications to Proposal**

The District reserves the right to modify this Request for Proposal or any portion hereof by written addendum issued to all Bidders who have previously obtained this RFP from the District. All addendums issued by the District pursuant to the foregoing shall be deemed incorporated into the Proposals.

**7. Evaluation of Proposals and Award**

The District will award the contract to a responsive and responsible Bidder whose Proposal is most advantageous to the District.

The District reserves the right to negotiate with and/or request best and final offers from selected bidder(s), as the District may deem appropriate in its sole and absolute discretion.

The issuance of this Request for Proposal creates no obligation on the part of the District and the District reserves the right to reject any or all Proposals, or to waive any irregularity or informality in a Proposal or in the Proposal process. Award of the sale by the Board will be based upon a comprehensive review and analysis of the Proposal(s) as to which best meets the needs of the District. The District will be the sole judge of the suitability of the Proposal and the Bidder shall abide by its decision.

The award of the contract will be contingent upon all required approvals, including, but not limited to, that of the FCC.

**8. Contract Terms & Conditions**

The District's intention is to award a contract, substantially in the form of the Asset Purchase Agreement attached at Appendix F, that will remain in place until all conditions of closing are met, all payments are received, and either (a) in the case of a sale, the assets and license are conveyed to the successful bidder or (b) in the case of a cooperative arrangement contemplating the reverse auction, the KCSM-TV spectrum is surrendered to the FCC in the reserve auction or the reverse auction has ended and the KCSM-TV spectrum has not been accepted in the bidding. By submission of a Proposal, the Bidder agrees to abide by the terms and conditions of the Proposal and contract documents. The District reserves the right to impose a different escrow requirement for the Asset Purchase Agreement depending upon the strength of the successful bidder's showing of financial resources to consummate the proposed purchase.

**9. Conflict of Interest**

No officer, member or employee of the District and no member of its governing bodies shall have any pecuniary interest, direct or indirect, in this contract or the proceeds thereof. No Bidder or member of Bidder's family shall serve on a District board, committee, or hold any such position which either by rule, practice or action nominates, recommends, or supervises Bidder's operation or authorizes funding to Bidder.

**10. Public Record**

Government Code Sections 6250 ET. seq., the Public Records Act defines a public record as any writing containing information relating to the conduct of the public's business. This applies to Proposals submitted pursuant to this Request for Proposals. The Public Records Act provides that public records shall be disclosed upon written request, and that any citizen has a right to inspect any public record, unless the document is exempted from the disclosure requirements. The District cannot represent or guarantee that any information submitted in response to the Request for Proposals will be confidential. If the District receives a request for any document submitted in response to this Request for Proposals, it will not assert any privileges that may exist on behalf of the person or business submitting the Proposal. Rather, the District will notify the party whose Proposal is being sought. In the event that a party who has submitted a Proposal wishes to prevent disclosure, it is the sole responsibility of that party to assert any applicable privileges or reasons why the document should not be produced, and to obtain a court order prohibiting disclosure.

**11. RFP Preparation Expenses**

The District will not be responsible for any expenses in the preparation and/or presentation of the Proposals or for the disclosure of any information or material received in connection with this solicitation, whether by negligence or otherwise.

**12. Proposal Submittal**

The responding firm assumes the sole responsibility for the complete effort required in this RFP. No special consideration shall be given after the Proposals are opened because of a firm's failure to be knowledgeable about all requirements of this RFP. By submitting a Proposal in response to this RFP, the firm represents that it has satisfied itself, from its own investigation, as to all of the requirements of this RFP.

The District reserves the right to request additional information or clarification, if necessary, or to reject any and all Proposals with or without cause, and waive any irregularities or informalities in the Proposals submitted. The District further reserves the right to make such investigations as it deems necessary as to the qualifications of any and all firms submitting Proposals. In the event that all Proposals are rejected, the District reserves the right to re-solicit Proposals. The District reserves the right, in its sole and absolute discretion, to negotiate with responding firms as determined by the District to be in the best interests of the District.

Documents and information submitted in response to this RFP shall become property of the District and generally shall be available to the general public as required by applicable law.

## **II. Scope of the Proposal**

This Request for Proposals ("RFP") is being issued by San Mateo County Community College District ("District") to solicit proposals from qualified entities (hereinafter referred to as "Bidder") with respect to KCSM-TV (the "Station") which is currently owned, operated by and licensed to the District. The District will consider two types of base proposal, as specified below.

**A. Sale.** The first type of base proposal is for the license for KCSM-TV to be transferred to the successful Bidder as well as the lease to Sutro Tower and the transmitter (please see Appendix C for detailed KCSM-TV information) and related equipment as listed on Appendix D. The Equipment will be sold in place and "as is". Buyer shall be responsible for the processes and costs of uninstalling and removing the Equipment, transporting it to a new location, and re-installing it. Seller will have no liability for damage to the equipment following the conveyance to Buyer.

Prospective responders who are interested in continuing to operate the Station from its current location on the College of San Mateo Campus for up to a maximum of one year must indicate their plans to do so including any need for short term use of existing facilities. This possibility is separate from the base proposal and must be negotiated separately with the District. A successful bidder that wishes to operate in that manner will be required, among other things, to provide proof of insurance coverage satisfactory to the District.

PLEASE NOTE: The District shall not assume any liability or responsibility for providing a subsidy in any way to the firm selected to acquire KCSM-TV pursuant to this RFP.

### 1) BACKGROUND

KCSM-TV began operation in 1964 at its current location at College of San Mateo, where it has served not only as a non-commercial, educational broadcaster, but as a laboratory for students in Broadcasting Arts. The District has been supporting KCSM financially. With the current California State Budget cuts, it can no longer support the station financially. The District has begun the process of the Station sale by:

- a) Compiling an inventory of the KCSM-TV's assets and liabilities to be included with the station sale (Appendix D, Inventory); and
- b) Identifying the methods or mechanisms required to transfer KCSM-TV assets and liabilities.

## 2) TRANSFER ACT MINIMUM REQUIREMENTS

For those interested in acquiring KCSM-TV, there are certain minimum requirements a prospective bidder must meet:

- a) The bidder must be either (1) a nonprofit corporation, organized as an educational and charitable corporation validly existing and in good standing in the State of California and incorporated, organized and operated in such a manner as to qualify as a nonprofit corporation under section 501 (c)(3) of the Internal Revenue Code (or any successor provision), exempt from taxation under section 501 (a) of the Internal Revenue Code (or any successor provision); or (2) another type of eligible entity permitted to operate a noncommercial television station under FCC rules and regulations and to conduct business in California; and
- b) On or before closing, the certificate of incorporation and by-laws of the bidder must authorize the receipt the FCC operating licenses currently assigned to the KCSM-TV and the ownership of the related assets and liabilities and provide that the purposes of the nonprofit corporation include the ownership and operation of a non-commercial, educational television station.

- 3) **NO REPRESENTATIONS AND WARRANTIES AS TO INFORMATION SET FORTH IN THIS RFP.** Certain information concerning KCSM-TV and the District has been provided as part of this RFP in Appendices C, D, and E. However, please note that these attachments are for the convenience of the bidders only and, except as shall be specifically represented and warranted in the Asset Purchase Agreement among the parties, the District, in KCSM-TV's capacity as FCC licensee, does not and will not make any representations or warranties as to these materials, financial information, market shares, potential revenue, competitive factors, costs of operations or any other matters that are forward-looking.

The District and its officials, employees, and legal counsel do not represent or warrant the accuracy of this information or of any estimates contained herein. All documents and estimates should therefore be independently verified and confirmed by potential bidders.

The selected Bidder will have an opportunity, and is encouraged, to make an independent evaluation and confirmation of all such matters during a due diligence period.

## 4) Proposal Response

Potential bidders must review and respond in detail to all of the following questions in order to assure understanding of the scope and provisions of each party's responsibilities under this Request for Proposal. The selected bidder shall be required upon notice by the District that it has been selected to enter into a purchase contract substantially in the form attached hereto. Bidders should note in their responses any exceptions, objections or additions to the terms outlined.

- a) Describe your offer. Please include total price offered, to be paid by wire transfer of immediately available federal funds at the closing of the transaction. Please provide evidence of the source of the cash. Please describe any intention to pursue financing/loans/or other funds, including information on (i) your expected sources, reserves, lines of credit or other financing needs. Please be specific with respect to your intention to lease District space. As an alternative to an all-cash offer, you may devise an offer that includes deferral of a portion of the total price. If you make an offer that includes such a deferral, you must be specific with respect to the terms offered, including the length of the payment period, the frequency of payments, the interest rate, the basis for calculation of the interest rate, and the security and guarantees to be offered. The District will weigh the economic value of competing offers, considering factors such as net present value and creditworthiness of the bidder. While the District will entertain offers involving deferred payments, it has a preference for bids that include all or substantially all cash upon closing.
- b) Disclose the full names of your governing board members including their time served on the board.
- c) \_\_\_\_\_ (initial if statement is true) There are no adverse findings with respect to violations of the law for the board members which would preclude the entity from purchasing the station.
- d) Attach a brief description of your organization, its structure, and its state/country of incorporation or formation including its non-profit status (501c3 or other determination). If you have an attributable interest in any radio or television stations, please describe them. Additionally, include annual audited financial statements for the last three years of your operation.
- e) \_\_\_\_\_ (yes or no) Our Bidder may wish to offer employment to some of the displaced KCSM employees. (The willingness to offer employment to existing KCSM-TV personnel will be a decisional factor only among bids that are of equal value).
- f) Explain how your organization would meet the FCC requirement to be broadly representative of the community of license, San Mateo, CA.
- g) CPB qualifications:  
\_\_\_\_\_CPB qualified currently

\_\_\_\_\_ We believe we could qualify for CPB financial support  
 \_\_\_\_\_ We believe we could not qualify for CPB financial support  
 (CPB qualifications standards may be accessed, as of the time of this writing, at [http://www.cpb.org/stations/grants/tv/generalprovisions/cpb\\_13TV\\_CSG\\_GeneralProvisions.pdf](http://www.cpb.org/stations/grants/tv/generalprovisions/cpb_13TV_CSG_GeneralProvisions.pdf), although it is Bidder's responsibility to determine those standards)

**B. Subsidization of station operations and cooperative participation in FCC spectrum auction.** The second type of base proposal is to subsidize the continued operation of KCSM-TV by the District for an interim period and then work with the District cooperatively to tender the station's spectrum in the planned FCC reverse spectrum auction.

The FCC has been authorized by Congress to conduct a reverse auction of television band spectrum through the Middle Class Tax Relief and Job Creation Act of 2012, (often referred to as the Spectrum Act). The FCC has released a Notice of Proposed Rulemaking (Notice) to consider the design of a voluntary reverse auction of television licensees' spectrum rights, the repacking of broadcast television licensees into a smaller total bandwidth, and the "forward auction" of the resulting cleared spectrum to commercial wireless companies. A copy of that Notice including appendices is posted at <http://tinyurl.com/8j76g9k>.

The FCC has announced a schedule to finalize rules for the auctions by mid-2013 and to conduct the auction in 2014. The Spectrum Act authorizes only a single television band auction, which must be completed before September 30, 2022.

The District will entertain proposals to (a) subsidize the operations of KCSM-TV in the amount of no less than \$800,000 per 12-month period until such time as the reverse auction results are announced and finalized by the FCC and the District is no longer responsible for the operation of KCSM-TV, and (b) engage in one or more of the additional options described below. During the period of subsidization the District shall remain the owner, licensee, and operator of KCSM-TV and a successful bidder under this type of base proposal will have no role in station operations. The subsidy would be nonrefundable. A bidder may propose to make an upfront payment to the District (in addition to the subsidization of operations) for the right to work cooperatively with the District in the reverse auction and/or propose a split of reverse auction proceeds with the District. A bidder should specify in its proposal how it would work cooperatively with the District to formulate a reverse auction bid or bidding strategy. That proposal must acknowledge the District's responsibilities as an FCC licensee and be formulated so as to accommodate FCC requirements in that respect.

The District would commit to tender the spectrum of KCSM-TV at reverse auction if it selects a successful bidder under this type of base proposal. A bidder must, however, propose what it contemplates would happen if participation in the reverse auction did not result in a successful bid.

#### Proposal Response

Potential bidders must review and respond in detail to all of the following questions in order to assure understanding of the scope and provisions of each party's responsibilities under this Request for Proposal. The selected bidder shall be required upon notice by the

District that it has been selected to enter into a contract embodying the terms upon which the parties agree.

Describe your offer. Please include (i) the amount of any consideration to be paid by wire transfer of immediately available federal funds upon full execution of a contract between the successful bidder and the District, (ii) the amount of subsidization of operations that will be paid to the District between the date of such contract and the method and terms of payment, (iii) a detailed proposal with respect to cooperative participation in the reverse auction and the contemplated division of any funds realized in that auction for surrender of the KCSM-TV spectrum and provision for the event that the reverse auction bid is not successful. Please provide evidence of the source of funds for items (i) and/or (ii) immediately above. Please describe any intention to pursue financing/loans/or other funds, including information on (i) your expected sources, reserves, lines of credit or other financing needs. The District will weigh the economic value of competing offers, considering factors such as net present value and creditworthiness of the bidder.

Disclose the full names of your governing board members including their time served on the board.

Attach a brief description of your organization, its structure, and its state/country of incorporation or formation. Additionally, include annual audited financial statements for the last three years of your operation.

**Appendix A**

**BIDDER INFORMATION AND SIGNATORY PAGE**

Bidder Name: \_\_\_\_\_

Business Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_ Web Site: \_\_\_\_\_

Type of Firm: Corporation: \_\_\_\_\_ Proprietorship: \_\_\_\_\_  
Partnership: \_\_\_\_\_ Joint Venture: \_\_\_\_\_  
Other (please describe): \_\_\_\_\_

Business License Number: \_\_\_\_\_

Number of years in business under firm name: \_\_\_\_\_

Full names of firm's owners (> 5% ownership), officers and managing employees:

Has the firm changed its name within the past 3 years? YES  NO

If yes, provide former name(s):

\_\_\_\_\_

If yes, explain:

Have officers or principals of the firm ever had their business license suspended or  
revoked for any reason? YES  NO

If yes, please explain:

Name and title of person completing responsible for submission of this Proposal and the  
responses to this questionnaire:

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name & Title: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

**Appendix B**

**NON-COLLUSION AFFIDAVIT**

**STATE OF CALIFORNIA**

**COUNTY OF \_\_\_\_\_**

I, \_\_\_\_\_, being first duly sworn, deposes and says that I am  
(Typed or Printed Name)

\_\_\_\_\_ of \_\_\_\_\_,  
Title (“the Bidder”).

the party submitting the foregoing Proposal. In connection with the Proposal, the undersigned declares, states and certifies that:

1. The Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, Bidder, association, organization or corporation.
2. The Proposal is genuine and not collusive or sham.
3. The Contractor has not directly or indirectly induced or solicited any other Contractor to put in a false or sham Proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any other Contractor or anyone else to put in sham Proposal, or to refrain from submitting a Proposal.
4. The Contractor has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Proposal price, or that of any other Contractor, or to fix any overhead, profit or cost element of the Proposal price or that of any other Contractor, or to secure any advantage against the public body awarding the contract or of anyone interested in the proposed contract.
5. All statements contained in the Proposal and related documents are true.
6. The Contractor has not, directly or indirectly, submitted the Proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any person, corporation, partnership, Bidder, association, organization, Proposal depository, or to any member or agent thereof to effectuate a collusive or sham Proposal.

Executed this \_\_\_\_ day of \_\_\_\_\_, 2013\_\_\_\_ at \_\_\_\_\_.  
(City, County and State)

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

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## **APPENDIX C: INFORMATION ABOUT KCSM-TV**

### Studios and Office Facility

The current operational studio and office facility are located on the campus of College of San Mateo, 1700 W. Hillsdale Blvd., building 9, San Mateo, CA 94402

### Audience Data

KCSM-TV reaches most of the San Francisco-Oakland-San Jose Market, which is ranked as the #6 market in the country by Nielsen Local Television Market Universe Estimates. There are approximately 2,502,030 homes that can view television in this market, resulting in approximately 7 million potential viewers. KCSM-TV can reach approximately 5,800,000 of those viewers over the air.

FCC License information: See attached authorizations for main and auxiliary broadcast stations

Contour map: See attached map

### Transmitter Site – Sutro Tower

Sutro Tower information can be found at <http://www.sutrotower.com>

A copy of the Sutro Tower lease is attached.



**Appendix D**  
**Equipment to be included with license sale**

<b>Asset Description</b>	<b>Acquisition Date</b>	<b>Make/Mnfctr</b>	<b>Model</b>	<b>Serial Number/ VIN</b>
MassTech Mass Logger	11/30/2007	MassTech	2RU 2-channel	K898X0652300487
Neilsen Encoder	11/17/2004	Neilsen	NE9-UNI-950	18672
Neilsen Encoder	11/17/2004	Neilsen	NR9-UNI-950	18679
Neilsen Encoder,	11/17/2004	Neilsen	NE9-UNI-950	18669
Digital Transmitter	8/1/2003	Harris	DKD90P4	SPCD316-02
Waveguide Combiner Module	4/1/2003	Dielectric		
Encoder System	4/1/2003	TANBERG	E5821	370
Transmitter,	1/1/1996	MICROWAVE RADIO		900900-7
	501FLR12R3242			
Microwave Hot Standby	1/1/1996	MICROWAVE RADIO		901049-1
Microwave Transmitter	1/1/1994	MICROWAVE RADIO		501FLR12R3240
Tandberg HD Encoder	7/25/2007	Tandberg	E5780	TB21773
nCompass Control System	7/25/2007	Tandberg/IBM		48259
GuideBuilder Package	7/25/2007	Triveni / Dell	GDBR	9Q96MC1
Encoder/Decoder System	3/5/2007	TFT	EAS911	10105472
Encoder/Decoder System	3/5/2007	EAS911	TFT	10105472
nCompass Control System	7/25/2007	Tandberg/IBM	48259	
Tandberg HD Encoder	7/25/2007	Tandberg	TB21773	
Triveni GuideBuilder	7/25/2007	GDBR	Triveni / Dell	9Q96MC1
Tanberg Encoder System	4/1/2003	E5821	TANBERG	370
Encoder, Audio/Video	11/17/2004	NE9-UNI-950	Neilsen	18669
Encoder-Audio/Video	11/17/2004	NE9-UNI-950	Neilsen	18672
Encoder-Audio/Video	11/17/2004	NR9-UNI-950	Neilsen	18679

**Appendix E**  
**Additional Equipment that will be available after the License Sale**

<b>Asset Description</b>	<b>Acquisition Date</b>	<b>Make/ Model</b>	<b>Mfgr</b>	<b>Serial Number/ VIN</b>
Digital Satellite Receiver	11/12/2003	MRD-3187A	Bitlink	250281
DVC Pro VCR	11/3/2003	AJ-SD930	Panasonic	F3TRA0018
DVC Pro VCR	11/3/2003	AJ-SD930	Panasonic	F3RTA0019
Dekocast Turnkey System	6/4/2004	Dekocast	Pinnacle	4.01014E+11
Tektronix Rasterizer	10/2/2008	7020	Tektronix	B041573
"Comp. Hardware, Encoder	7/10/2006	HD9084	Evertz	511620030
Titan Automation Base	11/18/2008	Base System	Sundance/Titan	LMEQ8E0138366, 8072030 5MBDX73H2568"
Master Control Cabling	5/3/2006			
Master Control Racks	5/3/2006		Middle Atlantic	
Dell PowerEdge Server	3/18/2009	1950	Dell	F9N1KJ1
Digital Satellite IRD	1/9/2007	8095-1		
Sencore Atlas	6803226			
Evertz Auto Sensing HD-SD	8/26/2008	3001MVP	Evertz	1821950126
Tektronix Wfm Rasterizer	10/2/2008	7020	Tektronix	B041571
KVM Switch	8/3/2006	AMX5010	42U	210073636
Tektronix Wfm Rasterizer	10/2/2008	7020	Tektronix	B041572
Digital Betacam	10/5/2006	DVW-M2000	Sony	11818
Tektronix Waveform Monitor	11/18/2009	7120	Tektronix	B053401
Dekocast with Video Clip	9/26/2006	Dekocast	Avid	ABAC5626026
DekoCast Hybrid System	6/30/2009	7010-20403	DekoCast	YBDL838001
Rack Workstation	3/25/2009	R5400	Dell	8JP9LJ1
Sony HDCAM VTR	1/12/2010	HDWD1800	Sony	13697
Tektronix Video Generator	10/23/2008	HDVG7BK	Tektronix	0901429PN01955 09121401PN01815
A to D, D to A Modules	7/1/2001	8900 series	Grass Valley	SR23045
Noise Reducer	1/3/2003	TBS180AV	Kudos	4212243
Digital Vision IRD	7/22/2003	Bitlink	Digital Vision	250094
Panasonic Production VTR	6/30/2008	SD255/SDI	Panasonic	F8TRB2036
Panasonic Production VTR	6/30/2008	SD255/SDI	Panasonic	F8TRB2037
Panasonic Production VTR	6/30/2008	SD255/SDI	Panasonic	F8TRB2042
Sony Recorder Deck	6/10/2009	PDWHD1500	Sony	14915
Sony Recorder Deck	6/10/2009	PDWHD1500	Sony	14917
Digital Video Recorder		HDW-1800	Sony	12320
Digital Video Recorder		PDW-F75	Sony	10921
Dell Server	8/20/2003	PE2600	Dell	SW31-431
Videotape Recorder w/25mb	2/28/2001	AJ-D950	Panasonic	L8TRA0106
Video Player/Recorder	1/1/2001	AJ-D950	PANASONIC	H1TRC0005
Video Recorder	1/1/2001	AJ-D950	PANASONIC	H1TRC0004
Dockable Recorder AJ-D90	9/17/2001	AJ-D90	Panasonic	H1TNA0010
Sony HD Camera Package	6/24/2010	BRCZ700	Sony	111131
Joker Bug News Belt Kit	5/30/2008	200/400	K5600	4076
O'Connor Fluid Head Package	6/30/2008	1030HD	O'Connor	
Sony HD Cameras	3/24/2008	PDWF-335L	Sony	10486 PMWEX1
Sony HD Cameras	3/24/2008	PMWEX1	Sony	104761
Server System	6/13/2001	XP PVS1000	Grass Valley	GV011616
Digital Video Interface	1/1/1999	PFV-D300	SONY	
Digital Video Switcher	1/1/1998	DVS-7250	SONY	10120
Videotape Recorder Pana.	9/1/2001	AJ-D95	Panasonic	
Videotape Recorder Pana.	9/1/2001	AJ-D95	Panasonic	
Videotape Recorder Pana.	9/1/2001	AJ-D95	Panasonic	

Appendix F

**ASSET PURCHASE AGREEMENT**

between

**SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT**

and

\_\_\_\_\_

[Date]

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## ASSET PURCHASE AGREEMENT

This **ASSET PURCHASE AGREEMENT** (this “Agreement”), dated as of \_\_\_\_\_, 2012, is entered into between **SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT**, a California Community College District (“Seller”), and \_\_\_\_\_, a California \_\_\_\_\_ (“Buyer”).

### Recitals

A. Seller is the licensee of and operates noncommercial educational television Station KCSM-TV, San Mateo, California (the “Station”), pursuant to licenses 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 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 covenants contained herein, Buyer and Seller agree as follows:

### SECTION 1 SALE AND PURCHASE OF ASSETS

#### 1.1 Agreement to Sell and Buy.

Seller shall sell, convey, and deliver to Buyer, and Buyer shall purchase, acquire and accept, at the Closing the assets owned or held by Seller and described in this Section 1.1 (collectively, the “Transferred Assets”). The Transferred Assets will include the following:

- (a) all licenses and authorizations issued by the FCC for the operation of the Station (the “FCC Licenses”), all of which are listed in Schedule 3.4 hereto;
- (b) the tangible personal property owned by Seller (the “Personal Property”), all of which is listed on Schedule 3.6 hereto, including any additions thereto or replacements thereof made between the date of this Agreement and the Closing, and less any retirement or dispositions thereof made between the date of this Agreement and the Closing in the ordinary course of business and consistent with the past practices of Seller;
- (c) the contracts and agreements listed on Schedule 3.7 hereto (including but not limited to the lease for the Mount Sutro Tower transmitting system site), together with all contracts, leases and agreements entered into by Seller between the date of this Agreement and the Closing in the ordinary course of business, consistent with the past practices of Seller and in accordance with this Agreement and which Buyer specifically agrees in writing to assume at the Closing (collectively, the “Assumed Contracts”);

- (d) the files and records of Seller relating to the operations of the Station or the Transferred Assets, all applications and filings with the FCC, technical information and engineering data, all files and records required to be maintained in accordance with the rules, regulations and policies of the FCC (“FCC Rules”), and all written Assumed Contracts; and

## 1.2 **Excluded Assets.**

Notwithstanding the foregoing or any other provisions of this Agreement, the Transferred Assets to be conveyed to Buyer hereunder shall exclude the following (all of which shall be referred to herein collectively as the “Excluded Assets”):

- (a) all pension, health insurance, and other employee benefit plans maintained by Seller for the benefit of the Seller’s employees;
- (b) cash and cash equivalents;
- (c) Any items of personal property not listed on Schedule 3.6.
- (d) All intellectual property associated with the Station.

## 1.3 **Assumption of Liabilities and Obligations.**

On the terms and subject to the conditions set forth in this Agreement, Seller shall transfer to Buyer and Buyer shall assume (i) all obligations and liabilities arising out of Buyer’s ownership of the Transferred Assets, (ii) all obligations and liabilities of Seller under the Assumed Contracts, and (iii) all obligations and liabilities of Seller under the FCC Licenses and all other Transferred Licenses transferred to Buyer. All of the foregoing liabilities and obligations assumed by Buyer under this Agreement shall be referred to herein collectively as the “Assumed Liabilities.”

## 1.4 **Retained Liabilities.**

Notwithstanding anything to the contrary in this Agreement, Buyer does not assume or agree to pay, satisfy, discharge or perform any liabilities, obligations or commitments of Seller of any nature whatsoever other than the Assumed Liabilities. All other obligations and liabilities shall remain and be the obligations and liabilities solely of Seller, including but not limited to, and notwithstanding anything in Section 1.3 to the contrary, (i) any and all liabilities and obligations of Seller relating to any current or former employees of Seller, (ii) any and all liabilities and obligations of Seller relating or arising in connection with any Excluded Asset, and (iii) those expenses and taxes that are the obligation of Seller as provided in Section 6.2(b). All such liabilities, obligations and commitments of Seller described in this Section 1.4 shall be referred to herein collectively as the “Retained Liabilities.”

## **SECTION 2** **PURCHASE PRICE**

### **2.1 Purchase Price.**

(a) The consideration for the assignment and transfer of the Transferred Assets shall be \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) to be paid by wire transfer at Closing and the assumption by Buyer of the Assumed Liabilities. The Purchase Price shall be adjusted to prorate prepaid items associated with the transferred Assets, including, but not limited to, prepaid service policies, transmitter site rent, and funds received from the Corporation for Public Broadcasting or other funding agencies to the extent to which Buyer is eligible to receive such funds, as appropriate to reflect the periods during which each party shall receive the benefits of those items.

(b) Concurrently with the signing of this Agreement, Buyer shall deposit ten percent of the cash portion of the Purchase Price with the Escrow Agent (the "Escrow Deposit"), which sum shall be held and disbursed in accordance with the provisions of the Escrow Agreement. On the Closing Date, and concurrent with the Closing, the Parties will instruct the Escrow Agent to disburse the Escrow Deposit to Seller and to be applied to the Purchase Price and any interest accrued thereon shall be disbursed to Buyers.

## **SECTION 3** **REPRESENTATIONS AND WARRANTIES OF SELLER**

As an inducement to Buyer to enter into this Agreement, Seller makes the following representations and warranties to Buyer, each of which is true and correct on the date hereof and shall survive the Closing for the period set forth herein:

### **3.1 Organization, Standing and Authority.**

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) to conduct the business and operations of Seller as presently conducted, (iii) to execute and deliver this Agreement and each agreement being delivered hereunder (a "Related Agreement"), and (iv) to perform and comply with all of the terms, covenants, and conditions to be performed and complied with by Seller hereunder and thereunder.

### **3.2 Authorization and Binding Obligation.**

The execution, delivery and performance by Seller of this Agreement and each Related Agreement to which Seller is or shall be a party, and the consummation by Seller of the transactions contemplated hereby and thereby, have been duly authorized by all necessary corporate action. This Agreement and each Related Agreement to which Seller is or shall be a party has been, or at the Closing will be, duly executed and delivered by Seller. This Agreement constitutes, and on the Closing Date each Related Agreement to which Seller is a party will constitute, the legal, valid and binding obligation of Seller, enforceable against Seller 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.

### 3.3 **Absence of Conflicting Agreements and Required Consents.**

Subject to obtaining the FCC Consent (as defined in Section 6.1) and other third party consents that may be required to assign any of the Assumed Contracts to Buyer, all of which third party consents are set forth on Schedule 3.3, the execution, delivery and performance by Seller of this Agreement and the Related Agreements to which Seller is or shall be a party, (i) do not require the consent of any third party, (ii) will not conflict with any provision of the organizing documents of Seller, (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 Seller or any Transferred Asset may be bound, (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 Seller is a party or by which Seller or any Transferred Asset may be bound, and (v) will not create any claim, liability, mortgage, lien, pledge, condition, charge or encumbrance of any nature whatsoever upon any Transferred Asset. Without in any way limiting the foregoing, Seller warrants that it has complied with those requirements of California and local law with which a community college district must comply to sell a broadcast property (the "Special Warranty"). Seller will defend itself against any charge of noncompliance with such requirements and, in the event of a final decision by a competent authority that Seller has failed to comply with such requirements, will take all reasonable steps to come into compliance with such requirements.

### 3.4 **FCC Licenses and Authorizations: Compliance with Law.**

Schedule 3.4 is a true and complete list of all the FCC Licenses to be transferred to Buyer hereunder upon the FCC's grant of consent to the assignment of those FCC Licenses to Buyer. Seller is the authorized lawful holder of each such FCC License, each of which is in full force and effect for the remainder of its term as set forth on Schedule 3.4. The FCC Licenses comprise all of the licenses, permits, approvals, and authorizations necessary under the Communications Act of 1934, as amended, and the FCC Rules for the operation of the Station as presently operated and conducted. None of the FCC Licenses is subject to any restriction or condition, other than those set forth on the FCC License. Except as set forth on Schedule 3.4, the Station is operating in compliance in all material respects with all terms and conditions of the FCC Licenses and FCC Rules. Except as set forth on Schedule 3.4, (a) there are no applications, investigations, complaints, objections, petitions or proceedings pending or, to Seller's knowledge, threatened before the FCC relating to the Station, except for proceedings of general applicability to television broadcast stations, (b) all reports, forms, applications and statements required to be filed by Seller with the FCC or required by the FCC to be maintained by Seller with respect to the Station since the dates Seller has operated the Station have been filed in a timely manner and are substantially complete and accurate, (c) 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 and (d) the conduct of the business and operations of the Station and the Transferred Assets are in compliance in all material respects with all applicable engineering standards required to be met under applicable FCC Rules.

### 3.5 **Compliance with Laws**

There are no governmental licenses, permits, approvals, franchises, or authorizations, other than FCC Licenses, issued by any governmental entity to be transferred to Buyer hereunder. The FCC Licenses comprise all of the licenses, permits, approvals, franchises and authorizations necessary for the conduct of the business and operations of Seller, including the operation of the Station, as presently operated and conducted. Except as set forth on Schedule 3.5, there are (a) no applications, investigations, complaints, petitions, or proceedings pending or, to Seller's knowledge, threatened by any governmental or regulatory authority other than the FCC relating to the business or operations of Seller, including operation of the Station, (b) all reports, forms, applications and statements required to be filed by Seller with applicable governmental or regulatory authorities, other than the FCC, have been filed and are substantially complete and accurate, and (c) the conduct of the business and operations of the Station and the Transferred Assets are in compliance in all material respects with all applicable federal, state and local laws, rules, regulations, requirements and policies other than the Communications Act and the FCC Rules.

### 3.6 **Personal Property**

Schedule 3.6 is a true and complete list of all Personal Property owned or leased by Seller that will be included in the transaction. Seller has good title to all such items of Personal Property. Except as noted on Schedule 3.6, none of the Personal Property is subject to any security interest, mortgage, pledge, lease or licensing agreement, conditional sales agreement, or other lien or encumbrance. The Personal Property is, and on the Closing Date will be, available for immediate use by Buyer in the conduct of the business and operations of the Station in all material respects as they are now being operated and conducted, has been maintained by Seller in good operating condition and repair (ordinary wear and tear excepted), and will permit the Station to be operated by Buyer in all material respects as it is now being operated and conducted. All material items of transmitting and studio/office equipment included in the Personal Property have been maintained in a manner consistent with generally accepted standards of good engineering practice, and will permit Buyer to conduct the business and operations of the Station in compliance with the terms of the FCC Licenses and the rules and regulations of the FCC in all material respects.

### 3.7 **Assumed Contracts**

Schedule 3.7 lists and describes all of the Assumed Contracts, which are limited to service agreements and warranties on the Personal Property. All Assumed Contracts are in full force and effect, and are valid, binding and enforceable in accordance with their terms. There is not any material default by any party thereto or event which, after notice or lapse of time, or both, would constitute such a default such that any party would have the right to terminate any Assumed Contract. Seller is not aware of any intention by any party to any Assumed Contract (i) to terminate such contract or amend the terms thereof; (ii) to refuse to renew the same upon expiration of its term, or (iii) to renew the same upon expiration only on terms and conditions that are more onerous than those pertaining to such existing contract, where any of the foregoing would be materially adverse to Buyer. Except for any third party consents that may be required,

each of which consent is listed on Schedule 3.7, Seller has full legal power and authority to assign its rights under the Assumed Contracts to Buyer in accordance with this Agreement, and such assignment will not affect the validity, enforceability and continuation of any of the Assumed Contracts. Except in the case of those Assumed Contracts that are identified as a “Material Contract” on Schedule 3.7, none of the Assumed Contracts shall be deemed material to the operation of the Station and their assignment is not a condition to the consummation of the transactions contemplated herein.

3.8 **Intangible Property.**

The Intangible Property consists of any licensed third party software or service contracts that are used in connection with the Personal Property.

3.9 **Transferred Assets.**

The Transferred Assets will permit the Station to be operated by Buyer following the Closing in all material respects as it is currently being operated and conducted, except that Buyer will need to make arrangements for studio facilities.

3.10 **Insurance.**

All of the 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.

3.11 **Claims: Legal Actions.**

Except as set forth on Schedule 3.11 and except for proceedings of a general nature that may affect the television broadcast industry, there is no claim, legal action, arbitration, governmental investigation, application or rule making proceeding, in progress, pending, or, to Seller’s knowledge, threatened, against or relating to Seller, the Transferred Assets, or the conduct of the business or operations of Seller, or which would have a material adverse affect on Seller’s ability to perform its obligations in accordance with the terms of this Agreement or any Related Agreement, and Seller has no knowledge of any facts that would result in any such proceeding.

3.12 **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 Transferred 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.

3.13 **Disclosure.**

No representation or warranty made by Seller herein or in any Schedule hereto or any certificate or other document delivered or to be delivered by or on behalf of Seller pursuant to this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make any such statement contained herein or therein not misleading.

**SECTION 4**  
**REPRESENTATIONS AND WARRANTIES OF BUYER**

As an inducement to Seller to enter into this Agreement, Buyer makes the following representations and warranties to Seller, each of which is true and correct on the date hereof and shall be true as of the date of the Closing:

4.1 **Existence and Power.**

Buyer is a \_\_\_\_\_ duly organized, validly existing and in good standing under the laws of the State of California with all requisite power under its \_\_\_\_\_ to enter into and perform this Agreement and the transactions contemplated hereby and to carry on its business as now conducted and as intended to be conducted after the Closing, including its ownership of the Transferred Assets and operation of the Station. On the Closing Date, Buyer will be qualified to do business and in good standing in the State of California.

4.2 **Authorization and Binding Obligation.**

The execution, delivery, and performance by Buyer of this Agreement and each Related Agreement to which Buyer is or shall be a party, and the consummation by Buyer of the transactions contemplated hereby and thereby, have been duly authorized by all necessary \_\_\_\_\_ action. This Agreement and each Related Agreement to which Buyer is or shall be a party has been, or at the Closing will be, duly executed and delivered by Buyer. This Agreement constitutes, and on the Closing Date, each Related Agreement to which Buyer shall be a party, will constitute, the legal, valid, and binding obligation of Buyer, enforceable against Buyer 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.

4.3 **Absence of Conflicting Agreements.**

Subject to obtaining the FCC Consent and any required third party consents to the assignment by Seller to Buyer of the Assumed Contracts, the execution, delivery, and performance by Buyer of this Agreement and the Related Agreements (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 Buyer is a party or by which Buyer 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 Buyer is a party or by which Buyer may be bound, such that Buyer could not acquire the Transferred Assets and be the licensee of the Station.

4.4 **Eligibility of Buyer.**

Buyer is legally, financially, and technically qualified to be the assignee of the FCC Licenses and the owner and operator of the Station under the Communications Act of 1934, as amended, and the FCC Rules, including, but not limited to, eligibility to hold a noncommercial educational license under Section 73.621 of those rules.

4.5 **Litigation.**

There is no outstanding judgment, award, decree, writ or litigation, action, suit, investigation or other proceeding pending or, to Buyer's knowledge, threatened, which would have a material adverse effect on Buyer's ability to perform its obligations in accordance with the terms of this Agreement or any Related Agreement and Buyer has no knowledge of any facts that would result in any such proceeding.

4.6 **Disclosure.**

No representation or warranty made by Buyer herein or in any Schedule hereto or any certificate or other document delivered or to be delivered by or on behalf of Buyer pursuant to this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make any such statement contained herein or therein not misleading.

**SECTION 5**  
**COVENANTS OF SELLER AND BUYER**

5.1 **Pre-Closing Covenants of Seller.**

Except as expressly authorized by this Agreement or with the prior written consent of Buyer which consent shall not be unreasonably withheld, between the date hereof and the Closing, Seller shall:

- (a) operate the Station and conduct its other activities in the ordinary course of business, consistent with and in accordance with its past practices and consistent with its representations and warranties set forth in this Agreement;
- (b) operate the Station in compliance in all material respects with the FCC Licenses and the FCC Rules, including but not limited to the timely filing of all reports, notices, applications, and the maintenance of records as may be required under those Rules;
- (c) operate the Station in compliance in all material respects with all other

laws, regulations, rules and orders applicable to the Station and the Transferred Assets;

- (d) not sell, convey, mortgage, encumber or otherwise dispose of any of the Transferred Assets except for the retirement of items of Personal Property in the ordinary course of business as permitted under Section 1.1(c) hereof, provided that such items are replaced by items of like kind or quality;
- (e) maintain, repair and replace the Personal Property consistent with its existing practices and operations, and maintain self-insurance on the Transferred Assets consistent with the past practices of Seller; (f) permit Buyer and its representatives and agents to have reasonable access to the Station and the Transferred Assets, provided that such access does not disrupt the normal operations of Seller;
- (g) promptly notify Buyer in the event there is any material damage to the Transferred Assets or interruption to the normal broadcast operations of the Station in excess of eighteen continuous hours at any one time or thirty-six hours over seven consecutive days;
- (h) promptly notify Buyer in writing if it determines, or has reasonable grounds to believe, that any representation or warranty of Seller or of Buyer is no longer accurate in all material respects, or that any covenant of Seller or of Buyer has been breached;
- (i) not enter into any new agreements that would be binding on Buyer after the Closing without the written consent of Buyer, to be granted or withheld in Buyer's sole discretion;
- (j) not terminate or materially amend or modify, or assign any rights relating to any Assumed Contract;
- (k) not create or assume any liens, encumbrances, or security interests affecting any of the Transferred Assets;
- (l) use its commercially reasonable efforts to obtain any third party consents necessary for the assignment of any Assumed Contract;
- (m) 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.

## 5.2 **Pre-Closing Covenants of Buyer.**

Except as expressly authorized by this Agreement or with the prior written consent of Seller, which consent shall not be unreasonably withheld, between the date hereof and the Closing, 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) promptly notify Seller in writing if it determines, or has reasonable grounds to believe, that any representation or warranty of Buyer or of Seller is no longer accurate in all material respects, or that any covenant of Buyer or of Seller has been breached;
- (c) use its commercially reasonable efforts to cooperate with Seller to obtain any third party consents necessary for the assignment of any Assumed Contract; and
- (d) 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.
- (e) 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.

## 5.3 **Post-Closing Covenants.**

After the Closing, Seller and Buyer will take such actions, and execute and deliver to Buyer or Seller, respectively, such further bills of sale, assignments or other transfer or assumption documents as may be necessary to ensure the full and effective transfer of title to the Transferred Assets to Buyer or the assumption of the Assumed Liabilities by Buyer pursuant to this Agreement.

## 5.4 **Third-Party Consents.**

Subject to Section 7.1(e), provided that Buyer has cooperated with Seller to obtain any required third-party consents, if any required third-party consent is not obtained by the Closing with respect to the transfer to Buyer of any contract or agreement that is not a Material Contract but that is intended to be included in the Transferred Assets, (i) title to such contracts and

agreements shall be retained by Seller and not transferred to Buyer at the Closing; and (ii) Seller will cooperate with Buyer in any reasonable arrangement designed to provide to Buyer as of the Closing the rights and benefits under such contracts and agreements and for Buyer to assume the obligations thereunder.

## **SECTION 6**

### **SPECIAL COVENANTS AND AGREEMENTS**

#### **6.1 FCC Consent.**

The assignment of the FCC Licenses as contemplated by this Agreement is subject to the prior consent and approval of the FCC (the "FCC Consent"). Within ten (10) business days of the date of this Agreement, Buyer and Seller shall file with the FCC an appropriate application for the FCC Consent (the "Assignment Application"), provided, however, that the failure to meet that filing deadline shall not constitute a material breach of this Agreement if the party is exercising commercially reasonable efforts to file the Assignment Application. The parties shall prosecute the Assignment Application with all reasonable diligence and use commercially reasonable efforts to obtain the grant of the Assignment Application expeditiously. Each party hereto shall defend against any petition to deny or informal objection filed with respect to the Assignment Application, with each party responding independently to any allegations directed against its qualifications. Each party shall pay its own attorneys fees and other costs incurred in filing and prosecuting the Assignment Application, including, without limitation, any attorneys fees and costs incurred in preparing and filing any submissions in response to any petition to deny or informal objection. The transfer of the Transferred Assets hereunder is expressly conditioned upon the grant of the FCC Consent without the imposition of any condition that is materially adverse to Buyer or Seller, and compliance by the parties with any conditions imposed by the FCC Consent that are not materially adverse to the parties.

#### **6.2 Expenses: Taxes.**

- (a) Except as provided for in this Section 6.2, each party shall be solely responsible for all expenses incurred by it in the negotiation and closing of this Agreement and any Related Agreement. Buyer shall pay all personal property sales and transfer taxes incurred in connection with the transactions contemplated hereby.
- (b) Notwithstanding anything in this Agreement to the contrary, Seller shall pay any and all taxes attributable to the conduct of the business and operations of Seller for all taxable years (or portions thereof) ending on or before the Closing Date.

#### **6.3 Risk of Loss.**

- (a) The risk of any loss, damage or impairment, confiscation, or condemnation (a "Loss") of any of the Transferred Assets from any cause whatsoever shall be borne by Seller at all times prior to the Closing. In the event of

any such Loss, the proceeds of any claim for Loss payable under any insurance policy, judgment or award with respect thereto shall be applied to repair, replace or restore such Transferred Assets to their prior condition as soon as possible after such Loss. Except as otherwise provided in Section 10, the risk of any Loss of any of the Transferred Assets from any cause whatsoever shall be borne by Buyer at all times after the Closing.

- (b) In the event of any damage or destruction of the Transferred Assets which prevents signal transmission by the Station in the normal and usual manner and Seller cannot or does not restore or replace the Transferred Assets before the Closing so that the Station is operating in accordance with good engineering standards and the terms of its FCC Licenses, using equipment and facilities comparable to those in place at the date this Agreement is executed, Buyer may, at its option and in its sole discretion, either (i) proceed to close this Agreement and complete the restoration and replacement of such damaged Transferred Assets after the Closing, in which event Seller's only obligation to Buyer shall be (x) to indemnify Buyer against the actual and reasonable cost of such restoration and replacement up to the Loss Payable limit of the District's self-insurance policy and (y) to deliver to Buyer all insurance proceeds received which are related to the Transferred Assets and arising from the event causing such damage or destruction; (ii) terminate this Agreement in writing, provided, that if Buyer elects to terminate this Agreement pursuant to this clause (b)(ii), it must give Seller written notice of such termination within thirty (30) days of its receipt of notice of damage or destruction of the Transferred Assets that provides Buyer with a reasonable basis to assess the extent of the damage and the prospects for repair and restoration. In the event Buyer elects to terminate this Agreement pursuant to this paragraph, neither party shall have any further liability to the other with respect to this Agreement, or (iii) postpone the Closing up to 60 days in order to permit the District to effect the needed restoration and replacement.

#### 6.4 **No Brokers.**

Seller and Buyer each represents that it has not engaged any third party to act as a finder, broker, agent, consultant, or in a similar capacity in connection with this Agreement and the transactions contemplated hereby. Seller and Buyer each agrees to indemnify and hold harmless the other with respect to any claim for a finder's, consultant's, broker's, or similar commission or fee made by any third party on the basis of its conduct.

**SECTION 7**  
**CONDITIONS TO OBLIGATIONS OF BUYER AND SELLER**

7.1 **Conditions of Obligations of Buyer to Close.**

All obligations of Buyer at the Closing hereunder are subject to the fulfillment prior to and at the Closing of each of the following conditions, any of which may be waived by Buyer in writing at or prior to the Closing:

- (a) **Representations and Warranties.** The representations and warranties of Seller shall be true and complete in all material respects at and as of the Closing Date as though such representations and warranties were made at and as of such date.
- (b) **Covenants and Conditions.** Seller shall have in all material respects performed and complied with the covenants, agreements, and conditions required by this Agreement to be performed or complied with by it prior to or on the Closing Date.
- (c) **Licenses.** Seller shall be the holder of the FCC Licenses and there shall not have been any modification of any such license that has a material adverse effect on the Station or the business or operations of the Station.
- (d) **FCC Consent.** The FCC Consent has been obtained and has become final (as that term is defined in Section 8.1).
- (e) **Third Party Consents.** All Material Contracts (as defined in Section 3.7 and identified on Schedule 3.7) shall be in full force and effect on the Closing Date. Seller shall have obtained and shall have delivered to Buyer any required third-party consents to the assignment of the Material Contracts.
- (f) **Adverse Proceedings.** No action, suit, claim or governmental proceeding shall be pending against, and no order, decree or judgment of any court, agency or other governmental authority shall have been rendered against, Seller or Buyer that: (i) renders it unlawful, as of the Closing Date, to effect the transactions contemplated by this Agreement in accordance with its terms; (ii) declares invalid or illegal the transactions contemplated hereby; (iii) enjoins the closing of the transactions contemplated hereby; (iv) awards material damages on account of the consummation of any transaction contemplated hereby; or (v) is a petition of bankruptcy by or against Seller, an assignment by Seller for the benefit of its creditors, or other similar proceeding.
- (g) **Deliveries.** Seller shall have made or stand willing and able to make all the deliveries to Buyer set forth in Section 8.2.

7.2 **Conditions of Obligations of Seller to Close.**

All obligations of Seller at the Closing hereunder are subject to the fulfillment prior to and at the Closing of each of the following conditions, any of which may be waived by Seller in writing at or prior to the Closing:

- (a) **Representations and Warranties.** The representations and warranties of Buyer shall be true and complete in all material respects at and as of the Closing Date as though such representations and warranties were made at and as of such date.
- (b) **Covenants and Conditions.** Buyer shall have in all material respects performed and complied with the covenants, agreements, and conditions required by this Agreement to be performed or complied with by it prior to or on the Closing Date.
- (c) **Adverse Proceedings.** No action, suit, claim or governmental proceeding shall be pending against, and no order, decree or judgment of any court, agency or other governmental authority shall have been rendered against, Seller or Buyer that: (i) renders it unlawful, as of the Closing Date, to effect the transactions contemplated by this Agreement in accordance with its terms; (ii) declares invalid or illegal the transactions contemplated hereby, (iii) enjoins the closing of the transactions contemplated hereby; (iv) awards material damages on account of the consummation of any transaction contemplated hereby; or (v) is a petition of bankruptcy by or against Buyer, an assignment by Buyer for the benefit of its creditors, or other similar proceeding.
- (d) **Deliveries.** Buyer shall have made or stand willing and able to make all the deliveries set forth in Section 8.3.

**SECTION 8**  
**CLOSING AND CLOSING DELIVERIES**

8.1 **Closing.**

Upon the terms and subject to the conditions set forth in this Agreement, this Agreement shall be consummated by Buyer and Seller (the "Closing") to occur at 10:00 am Pacific Time at the offices of the Station, unless another mutually agreeable location is chosen, on the fifth (5th) business day following the date upon which the FCC Consent is Final (the "Closing Date"). As used in this Agreement, the FCC Consent shall have become "Final" when that action, by lapse of time or otherwise, is no longer subject to administrative or judicial reconsideration, review, appeal or stay. Closing shall be effective as of 12:01 a.m. Pacific Time on the Closing Date, unless the parties agree on a different time.

## 8.2 **Deliveries by Seller.**

Prior to or at the Closing, Seller shall deliver to Buyer the following, in form and substance reasonably satisfactory to Buyer and its counsel:

- (a) **Transfer Documents.** Duly executed bills of sale, assignments, and other transfer documents including, without limitation, an “Assignment and Assumption of FCC Licenses” evidencing the assignment by Seller and the assumption by Buyer of the FCC Licenses, which shall be sufficient to vest good and marketable title or right to the Transferred Assets in the name of Buyer free and clear of any claims, liabilities, liens, pledges, conditions, charges, or encumbrances of any nature whatsoever, except for any taxes not yet due and payable, none of which individually or collectively impair the use and operations of the Station as presently operated;
- (b) **Officer’s Certificate.** A certificate, dated as of the Closing Date and executed by a duly authorized official of Seller, certifying (i) that the representations and warranties of Seller are true and complete in all material respects as of the Closing Date as though made on and as of that date, (ii) that Seller has, in all material respects, performed its obligations and complied with its covenants set forth in this Agreement to be performed and complied with by it prior to or on the Closing Date, and (iii) that Seller possesses all necessary governmental authority to execute this Agreement, the Related Agreements, and the closing documents contemplated herein;
- (c) **Board Resolutions.** Certified resolutions of Seller’s Board of Trustees approving the execution, delivery, and performance of this Agreement and the Related Agreements and the consummation of the transactions contemplated herein and therein, and the delivery of the closing documents provided for hereunder;
- (d) **Opinion of Counsel.** An opinion or opinions of counsel for Seller with respect to such matters substantially in the form set forth in Schedules 8.2(d)(1) and 8.2(d)(2) hereto ;
- (f) **Third-Party Consents.** All third-party consents to the assignment of the Material Contracts and an estoppel certificate from Sutro Tower, Inc.; and
- (g) **Other Documents.** All other documents, instruments, and writings required to be delivered by Seller at or prior to the Closing pursuant to this Agreement.

## 8.3 **Deliveries by Buyer.**

Prior to or at the Closing, Buyer shall deliver to Seller the following, in form and substance reasonably satisfactory to Seller and its counsel:

- (a) **Purchase Price.** The Purchase Price in accordance with Section 2.1.
- (b) **Assumption Agreements.** Appropriate assumption agreements pursuant to which Buyer shall assume and undertake to perform Seller's obligations under the FCC Licenses and all other governmental licenses and authorizations and the Assumed Contracts;
- (c) **Officer's Certificate.** A certificate, dated as of the Closing Date and executed by a duly authorized officer of Buyer, certifying (i) that the representations and warranties of Buyer are true and complete in all material respects as of the Closing Date as though made on and as of that date, (ii) that Buyer has, in all material respects, performed its obligations and complied with its covenants set forth in this Agreement to be performed and complied with by it prior to or on the Closing Date, and (iii) that Buyer possesses all necessary corporate authority to execute this Agreement, the Related Agreements, and the closing documents contemplated herein;
- (d) **Governing Entity Resolutions.** Certified resolutions of Buyer approving the execution, delivery, and performance of this Agreement and the Related Agreements and the consummation of the transactions contemplated herein and therein, and the delivery of the closing documents provided for hereunder;
- (e) **Good Standing Certificate.** A certificate of good standing from the Secretary of the State of California dated not more than fifteen (15) days prior to the Closing certifying that Buyer is in good standing; and
- (f) **Other Documents.** All other documents, instruments and writings required to be delivered by Buyer at or prior to the Closing pursuant to this Agreement.

## **SECTION 9** **TERMINATION**

### **9.1 Termination Rights.**

This Agreement may be terminated by written notice to the other party upon the occurrence of any of the following events or conditions, provided that the terminating party is not then in breach of any material provision of this Agreement:

- (a) by either Seller or Buyer, if there shall be in effect on the Closing Date any judgment, decree, or order that would prevent or make unlawful the Closing of this Agreement;
- (b) by either Seller or Buyer, if the Assignment Application shall be set for hearing by the FCC for any reason;
- (c) by either Seller or Buyer, if the FCC Consent has not been issued within

nine (9) months following the date the Assignment Application has been accepted for filing by the FCC;

- (d) by Buyer, pursuant to Section 6.3 (Risk of Loss);
- (e) by Buyer, if Seller is in material breach of its obligations and fails to cure such material breach within thirty (30) days of receipt of written notice from Buyer of the substance of Seller's material breach;
- (f) by Seller, if Buyer is in material breach of its obligations and fails to cure such material breach within thirty (30) days of receipt of written notice from Seller of the substance of Buyer's material breach; or
- (g) by either Seller or Buyer upon five (5) business days' prior written notice, if the other party defaults in its obligation to complete the Closing and the default is not cured within that period.

## 9.2 **Rights Upon Termination.**

Upon termination:

- (a) if neither party hereto is in breach of any material provision of this Agreement, the parties hereto shall not have any further liability; or
- (b) if this Agreement is terminated because Buyer is in breach of any material provision of this Agreement and has failed to cure such breach in a timely fashion, Seller shall be entitled, as its sole and exclusive remedy, to recover from Buyer the expenses (including reasonable attorney's fees) actually incurred by Seller in connection with the negotiation, preparation and performance of this Agreement and Buyer's breach, but not to exceed Fifty Thousand Dollars (\$50,000), or
- (c) if this Agreement is terminated because Seller is in breach of any material provision of this Agreement and has failed to cure such breach in a timely fashion, Buyer shall be entitled, as its sole and exclusive remedy (except as otherwise provided in Section 9.3), to recover from Seller the expenses (including reasonable attorney's fees) actually incurred by Buyer in connection with the negotiation, preparation and performance of this Agreement and Seller's breach, but not to exceed Fifty Thousand Dollars (\$50,000).

## 9.3 **Specific Performance.**

Notwithstanding the provisions of Sections 9.1 and 9.2, if Seller is in material default or breach of any material provision of this Agreement, Buyer shall have the right, in its absolute and sole discretion, to obtain specific performance of this Agreement. The parties hereby stipulate that the Transferred Assets and FCC Licenses are distinct and unique assets that cannot be replicated and that damages would be an inadequate remedy in the event of Seller's breach. Accordingly, Buyer shall be entitled, as a matter of right, upon notice to Seller, to seek specific

performance of this Agreement, subject to such equitable adjustments as the Court may impose.

## **SECTION 10** **INDEMNIFICATION**

### **10.1 Buyer's Right to Indemnification.**

Seller shall indemnify and hold harmless Buyer and its officers, directors, members, employees, agents, successors, and permitted assigns from and against and in respect of, and to reimburse them for, any and all losses, costs, liabilities, claims, obligations, and expenses, including reasonable attorneys' fees and expenses (together, "Claims"), incurred or suffered by any party arising from:

- (a) the operation of the Station or ownership of the Transferred Assets at or prior to the Closing;
- (b) any breach, misrepresentation, or other violation of or failure to perform any of Seller's covenants, agreements, warranties, or representations, including, without limitation, the Special Warranty, contained in this Agreement or any Related Agreement;
- (c) all obligations and liabilities of Seller arising under the FCC Licenses, any of the Assumed Contracts, or any of the other Transferred Assets prior to the Closing; and
- (d) all Retained Liabilities, including but not limited to all accounts payable for the operation of the Station between the date hereof and the Closing, and any contracts, agreements, leases and understandings that are not Assumed Contracts.

### **10.2 Seller's Right to Indemnification.**

Buyer shall indemnify and hold harmless Seller and its Trustees, officers, employees, agents, successors, and permitted assigns from and against and in respect of, and to reimburse them for, any and all Claims incurred or suffered by such parties arising from:

- (a) the operation of the Station or ownership of the Transferred Assets by Buyer on or after the Closing,
- (b) a breach, misrepresentation, or other violation of or failure to perform any of Buyer's covenants, agreements, warranties, or representations contained in this Agreement or any Related Agreement; and
- (c) all obligations and liabilities of Buyer arising under the FCC Licenses, any of the Assumed Contracts, or any of the other Transferred Assets arising on or after the Closing.

10.3 **Survival of Representations and Warranties.**

The representations and warranties of the parties contained herein, and the parties' respective indemnification rights pursuant to this Section 10 with respect thereto, shall expire on the date that is nine (9) months after the Closing, except for the District's obligations pursuant to Section 6.3(b) hereof.

**SECTION 11**  
**DISPUTE RESOLUTION**

11.1 **Disputes.**

The parties shall attempt in good faith to resolve any dispute, controversy or claim between them arising out of or relating to this Agreement, including without limitation any dispute over the breach, termination, interpretation, or validity thereof (the "Dispute"). Either party may request through written notice that the Dispute be referred to senior executives of the parties who have authority to resolve the Dispute. The executives shall attempt to resolve the Dispute by agreement within sixty (60) days of such notice.

11.2 **Failure to Resolve a Dispute.**

In the event the senior executives of the parties are not able to resolve the Dispute within sixty (60) days of such notice, as provided in Section 11.1, either party may seek judicial relief without any further notice to the other, provided, however, that the action shall be brought in the courts of the State of California with venue lying in the City and County of San Mateo.

**SECTION 12**  
**MISCELLANEOUS**

12.1 **Governing Law.**

This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of California, but without regard to the choice of laws provisions thereof.

12.2 **Construction.**

The headings herein are included for ease of reference only and shall not control or affect the meaning or construction of the provisions of this Agreement.

12.3 **Entire Agreement.**

This Agreement, all Schedules hereto, and all documents and certificates to be delivered by the parties pursuant hereto collectively represent the entire understanding and agreement between Buyer and Seller with respect to the subject matter hereof. All Schedules referenced in and attached to this Agreement and all documents referenced in the Agreement as previously delivered to either party shall be deemed part of this Agreement and incorporated herein, where

applicable, as if fully set forth herein. This Agreement supersedes all prior negotiations, agreements, and understandings between Buyer and Seller. This Agreement cannot be amended except by an agreement in writing which makes specific reference to this Agreement or an agreement delivered pursuant hereto, as the case may be, and which is signed by the party against which enforcement of any such amendment is sought.

12.4 **Assignment.**

Buyer and Seller shall not assign their interests or delegate their obligations under this Agreement without the prior written consent of the other party in its sole discretion, , provided that Buyer may assign its rights and delegate its obligations hereunder to an entity which is controlling, controlled by, or under common control with Buyer on condition that such assignment will not delay receiving the FCC Consent or the Closing. This Agreement shall be binding upon the successors and permitted assigns of the parties hereto.

12.5 **Notice.**

All notices, demands and requests required or permitted to be given under the provisions of this Agreement shall be (i) in writing, (ii) delivered by personal delivery, sent by commercial delivery service or registered or certified mail, return receipt requested, (iii) deemed to have been given on the date of personal delivery, or the date set forth in the records of the delivery service, or on the return receipt, whichever shall first occur, and (iv) addressed as follows:

To Seller:

San Mateo Community College District  
3401 CSM Drive  
San Mateo, California 94402

with copies to:

Ms. Jan Roecks  
General Services Director  
San Mateo County Community College District  
3401 CSM Drive  
San Mateo, California 94402

and

Schwartz, Woods & Miller  
Suite 610 - The Lion Building  
1233 20th Street, N.W.  
Washington, D.C. 20036-7322  
Attn: Lawrence M. Miller

To Buyer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with copy to:

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or to such other persons and addresses as the parties may from time to time designate in a writing to the other party delivered in accordance with this Section 12.5.

12.6 **Waiver.**

Either party may, at its election, waive in writing any or all of the conditions contained herein to which its obligations are subject. Waiver by either party hereto of any breach of or exercise of any right under this Agreement shall not be deemed a waiver of similar or other breaches or rights. The failure of a party to take any action by reason of any such breach, or to exercise any such right, shall not deprive such party of the right to take action at any time while such breach or condition giving rise to such right continues or in connection with any subsequent breach.

12.7 **No Third Party Beneficiary.**

Nothing in this Agreement is intended to confer upon any person other than the parties hereto and their respective successors and permitted assigns any rights or remedies under or by reason of this Agreement.

12.8 **Severability.**

Whenever possible, each provision hereof shall be interpreted so as to be effective and valid under applicable law. If, however, any provision contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision shall be ineffective to the extent, but only to the extent, of such invalidity, illegality, or unenforceability, and the remainder of this Agreement shall continue in effect and the parties shall endeavor to implement this Agreement so as to achieve the goals set forth herein.

12.9 **Counterparts; Execution.**

This Agreement may be signed in counterparts with the same effect as if the signature on each such counterpart were upon the same instrument. This Agreement shall not be deemed executed unless and until signed by both parties.

12.10 **Publicity.**

Except as may be required by applicable law, no press release or public announcements shall be made relative to this Agreement or the transactions contemplated hereby without the prior agreement of the parties hereto.

**Intending to be legally bound**, Buyer and Seller hereby execute this Agreement as of the date first above written:

San Mateo County Community  
College District

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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## **SCHEDULES**

3.3 Required Consents

3.4 FCC Licenses

3.6 Personal Property

3.7 Assumed Contracts

3.8 Intellectual Property

3.11 Claims; Litigation

8.2 (d)(1) and (2) Forms of opinion letters

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Required Consents

Lease with Sutro Tower, Inc. for Mt. Sutro KCSM-TV transmission site

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## FCC LICENSES AND AUTHORIZATIONS

STATION	LICENSES AND AUTHORIZATIONS	GRANT DATE	EXPIRATION DATE
KCSM-TV FCC Facility ID 58912 San Mateo, CA  <u>Associated Auxiliary Stations:</u>  STL WDD658 ICR WDD659 STL WFD436	BLEDT-20091124AHY	4/4/2011  5/26/2010	12/1/2014  12/1/2014

Personal Property

DRAFT

Assumed Contracts  
(\* indicates a Material Contract)

\* Lease with Sutro Tower, Inc. for Mt. Sutro KCSM-TV transmission site

DRAFT

Intellectual Property

DRAFT

Claims and Litigation

None

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Form of San Mateo County Community College District Counsel's Opinion Letter

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**[Office of County Counsel Letterhead]**

Buyer

\_\_\_\_\_  
\_\_\_\_\_

Re: Asset Purchase Agreement dated as of \_\_\_\_\_, 2013 (the "Purchase Agreement"), between San Mateo County Community College District, a California community college district ("Seller") and \_\_\_\_\_, a \_\_\_\_\_ non-profit corporation ("Buyer")

Dear Buyer:

The San Mateo County - Office of the County Counsel has acted as counsel for Seller in connection with the transaction contemplated by the Purchase Agreement. This opinion is being delivered to you pursuant to Section \_\_\_\_\_ of the Purchase Agreement. All capitalized terms not defined in this opinion shall have the meanings set forth in the Purchase Agreement.

In rendering this opinion, I have reviewed the following documents:

1. the Purchase Agreement;
2. the resolution of the Board of Trustees of Seller as certified to me by an appropriate official of Seller to be true and complete, to have been duly adopted by the Board of Trustees, and to be in full force and effect (without having been modified or rescinded) on the date hereof;

In our examination of documents and records, we have assumed, without investigation, the genuineness of all signatures, the legal capacity of natural persons, the authenticity of all documents submitted to me as originals, the conformity with originals of all documents submitted to us by facsimile or other reproduction, and the authenticity of all such documents.

In rendering this opinion, we have also assumed that (i) Buyer is duly organized, validly existing, and in good standing under the laws of its jurisdiction of organization and has the requisite power to enter into and perform the Purchase Agreement, (ii) the execution and delivery of the Purchase Agreement have been duly authorized by all necessary actions and proceedings on the part of Buyer, (iii) the Purchase Agreement has been duly executed and delivered by Buyer, and (iv) the Purchase Agreement constitutes the legal, valid, binding, and enforceable obligation of Buyer.

With respect to questions of fact, we have relied, without independent inquiry or verification, solely upon (a) the representations and warranties set forth in the transaction documents, (b) representations of Seller, and (c) certificates of public officials, taking into consideration any actual knowledge by us with respect to the matters at issue.

Our opinion is limited to matters arising under the laws of the State of California. We express no opinion as to any other laws or regulations or as to laws relating to choice of law or conflicts of law principles.

Based upon the foregoing, subject to the assumptions, limitations, and exceptions contained herein, we are of the opinion that:

I. Seller is a California community college district duly organized, validly existing, and in active status and good standing under the laws of the State of California.

II. Seller has all requisite power and authority to own and operate its assets, to carry on its business as now being conducted, and to enter into the Purchase Agreement and to perform its obligations thereunder.

III. The execution, delivery, and performance of the Purchase Agreement by Seller have been duly authorized by all necessary corporate action. The Purchase Agreement has been duly executed and delivered by Seller and constitutes the legal, valid, and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as such may be limited by bankruptcy, insolvency, reorganization, or other laws affecting creditors' rights generally, and by general equitable principles.

IV. Neither the execution, delivery, nor performance of the Purchase Agreement (a) violates or results in the breach of or contravenes any of the terms, conditions, or provisions of, or constitutes a default under any indenture, mortgage, lease, loan agreement, security agreement, or other material agreement to which Seller is a party or by which Seller is bound; (b) violates or results in a breach of or contravenes any applicable law, regulation, order, writ, injunction, decree, determination, or award of any court or governmental agency or instrumentality, domestic or foreign, or any arbitrator, applicable to either Seller or the Transferred Assets; (c) causes the suspension or revocation of any License; or (d) requires the approval or consent of or notice to any foreign, federal, state, county, local, or other governmental or regulatory body, which approval or consent has not been obtained or notice given.

V. There are to our knowledge no actions, suits, or proceedings pending or threatened against Seller in any court or before any arbitrator, or before or by any governmental agency or instrumentality, domestic or foreign,

that, if adversely determined, would materially impair the ability of Seller to perform its obligations under the Purchase Agreement or would materially impair or hinder the Buyer's ability or right to operate the Station after the Closing in substantially the same manner as the Station is now operated by Seller.

The information set forth herein is current as of the date hereof. We assume no obligation to advise you of changes that may thereafter be brought to our attention. Our opinions are based on statutory and judicial decisions in effect at the date hereof, and I do not opine with respect to any law, regulation, rule, or governmental policy that may be enacted or adopted after the date hereof, nor assume any responsibility to advise you of future changes in my opinions.

This letter is solely for your information in connection with the consummation of the transactions contemplated by the Purchase Agreement and is not to be quoted in whole or in part or otherwise referred to in any of your financial statements or public releases, nor is it to be filed with any governmental agency or other person without the prior written consent of a partner of this firm, provided, however, that this letter may be furnished to and relied upon by Buyer's bank.

By: \_\_\_\_\_

Eugene Whitlock  
Deputy County Counsel

Schedule 8.2(d)(2)

Form of San Mateo County Community College District  
Communications Counsel's Opinion Letter

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LAW OFFICES  
**SCHWARTZ, WOODS & MILLER**  
SUITE 610, THE LION BUILDING  
1233 20TH STREET, N.W.  
WASHINGTON, D.C. 20036-7322

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LOUIS SCHWARTZ  
(1918 - 2004)

\_\_\_\_\_, 2013

Re: Assignment of Station KCSM-TV license

Dear \_\_\_\_\_:

We have acted as counsel to San Mateo County Community College District ("SMCCCD") in connection with the proposed assignment of the Federal Communications Commission ("FCC") license for Station KCSM-TV, San Mateo, California (the "Station") to \_\_\_\_\_, a \_\_\_\_\_ ("Assignee"). We have represented SMCCCD before the FCC in connection with the Station for several years. We have been asked by SMCCCD to render this opinion to you pursuant to the Asset Purchase Agreement dated \_\_\_\_\_, 2013 between SMCCCD and Assignee (the "Agreement"). Defined terms used but not otherwise defined herein shall have the meanings ascribed to them in the Agreement. In connection with this opinion, we have examined, among other things, the Agreement and the instrument of assignment of the Station Licenses, dated as of the date hereof, between SMCCCD and Assignee (the "Documents").

We are admitted to practice only in the District of Columbia. This opinion is limited to matters arising under the Communications Act of 1934, as amended, and the published rules and policies promulgated thereunder by the FCC (collectively, the "Communications Laws"). This letter addresses matters as of the date of this opinion, and we disclaim any responsibility for advising you, your successors, assigns, and your counsel of changes in matters addressed herein occurring after this date. As to any factual matters embodied in or forming a basis for any legal opinion expressed herein, our knowledge is limited to actual knowledge acquired during representation of the licensee.

In making examinations with respect to the matters covered herein, we have relied upon SMCCCD's representations and warranties set forth in the Agreement and have assumed the (i) genuineness of all signatures, (ii) legal capacity of all natural persons, (iii) authenticity of all documents submitted to us as originals, and (iv)

conformity to originals of all documents submitted to us as copies. Furthermore, we have assumed the completeness of the public files maintained by the FCC and the accuracy and authenticity of all documents contained therein.

We have undertaken no on-site inspections of the Station and, except as otherwise specifically stated herein, we have undertaken no independent inquiry of any of the matters addressed herein and offer no opinion concerning whether the operation of the Station is (i) in accordance with the terms of the Station Licenses, or (ii) in accordance with the Communications Laws.

Based on the foregoing, and subject to the assumptions, qualifications and exceptions contained herein, we are of the opinion that:

1. The FCC Licenses are in full force and effect, and SMCCD has the legal right to assign them to you. The FCC Licenses include all FCC licenses, permits, and authorizations necessary for a licensee to operate the Station.

2. The FCC Licenses are not subject to any conditions outside the ordinary course.

3. The most recent renewal of the FCC License for the Station was granted by the FCC on May 26, 2010 and the current expiration date of the FCC Licenses is December 1, 2014.

4. The FCC has, by action of the staff of its Media Bureau under delegated authority, granted consent to the assignment of the FCC Licenses from SMCCD to Assignee without the imposition of conditions outside the ordinary course (the "Initial Order"). The Initial Order has become a Final Order and constitutes all necessary consents, approvals, and authorizations required under the Communications Act for assignment of the FCC Licenses to Assignee.

5. The execution and delivery of the Documents and the performance by SMCCD of its obligations under the Documents will not violate the Communications Act.

6. Based solely upon actual knowledge of lawyers in this firm who have substantial responsibility for SMCCD's FCC legal matters and a review of the public files of the FCC, we confirm that:

(a) there is no unsatisfied adverse FCC order, decree, or ruling outstanding against SMCCD with respect to the Station or any of the FCC Licenses;

(b) there is no notice of violation, proceeding (including any rule-making proceeding), complaint, or investigation with respect to the Station or any of the FCC Licenses by or before the FCC, or on appeal from an order of the FCC, or pending or threatened before the FCC (including any pending judicial review of such an action by

the FCC), except for proceedings affecting the radio industry generally to which SMCCD is not a specific party;

(c) SMCCD is not a party to any complaint, action, or other proceeding at the FCC with respect to the Station, including both complaints against other licensees or applicants and rule-making proceedings of general applicability; and

(d) no action, suit, proceeding, or investigation is pending or threatened, and no judgment, order, decree, or ruling has been entered, against SMCCD in any court or before or by any governmental authority (other than the FCC) that gives us reason to believe that any of the FCC Licenses will be revoked or will not be renewed in the ordinary course.

The foregoing opinions shall be for the benefit of and may be relied on only by Assignee.

Very truly yours,

SCHWARTZ, WOODS & MILLER

By: \_\_\_\_\_  
Lawrence M. Miller

LMM/nmc

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