

DONATION AGREEMENT

THIS DONATION AGREEMENT (“Agreement”) is made and entered into as of the 12th day of April 2023, by and between New Mexico Junior College, a public junior college (hereinafter “**Donor**”) and Eastern New Mexico University, a public university (hereinafter “**Donee**”).

WITNESSETH

WHEREAS, Donor and Donee are public post-secondary educational institutions located in the southeastern region of New Mexico; and

WHEREAS, Donee has expertise and experience in operating a radio station and has the necessary personnel to operate a radio station and to provide courses and educational opportunities associated with running and operating a radio station; and

WHEREAS, Donor and Donee agree to discuss opportunities for graduates of Donor to transition to Donee to complete degrees associated with running and operating a radio station; and

WHEREAS, Donor is the Federal Communications Commission (“**FCC**”) licensee of broadcast radio station KNMJ(FM), Eunice, New Mexico (FCC Facility ID No. 40206) (the “**Station**”); and

WHEREAS, Donor desires to convey all rights, title, and interest in and to the Station and related assets, as described herein, to Donee; and

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

WHEREAS, Donee is the licensee of noncommercial educational broadcast radio station KENW-FM; and

WHEREAS, the consummation of this Agreement is subject to the prior approval of the FCC;

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

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

- (a) all licenses, authorizations or other rights of any kind issued or granted by the FCC to Donor with respect to the Station (collectively the “**FCC License**”) listed in **Schedule A**;
- (b) certain tangible personal property used by Donor in the operation of the Station, as described in **Schedule B** (the “**Tangible Personal Property**”);
- (c) the contracts and other agreements to which Donor is a party and which are related to the Donated Assets, as listed in **Schedule C** (the “**Assumed Contracts**”).

This donation excludes from the Donated Assets any assets or liabilities of Donor not specifically described herein.

Donee understands and acknowledges that the Station is currently off the air since July 1, 2022 pursuant to an FCC grant of Silent Special Temporary Authority dated September 8, 2022 (FCC File No. 0000194501) and that the Station must return to licensed broadcast operation no later than July 1, 2023 or the FCC License will permanently expire. Pursuant to the Programming Agreement signed of even date herewith, Donor and Donee agree to work together to ensure that the Station returns to licensed operation no later than July 1, 2023 and that the FCC License does not expire.

2. **GIFT**. Subject to the prior approval and consent of the FCC, Donor agrees to convey the Donated Assets and a onetime payment of \$15,000.00 to Donee as a gift and, as such, will not require any form of monetary payment from Donee in exchange for said gifts, provided that Donee performs the covenants and obligations contained herein including the Post-Closing Obligations.

3. **FCC ASSIGNMENT APPLICATION**. Within five (5) business days after the the parties hereto fully execute this Agreement, the parties will file an application with the FCC for its consent to the assignment of the FCC License from Donor to Donee (the “**FCC Application**”). The parties will vigorously prosecute the FCC Application and do all things reasonably necessary and/or appropriate to obtain a grant thereof.

4. **CLOSING**. Within ten (10) days after the FCC issues an order granting its consent to the transactions contemplated by this Agreement (the “**FCC Consent**”), a Closing will take place by exchange of documents using a nationally recognized overnight courier service, or e-mail or fax. At the Closing, the parties will exchange any and all documents required to carry out the terms of this Agreement, including but not limited to, an assignment of the Station’s license from Donor to Donee.

5. **POST-CLOSING OBLIGATIONS**. For so long as Donee is the licensee of the Station, Donee shall use the Station (i) to present the highest quality public radio programming

for the Hobbs, New Mexico area and surrounding communities; and (ii) to serve the needs and interests of the community of license, Eunice, New Mexico, and surrounding areas within the Station's coverage area. For a period of five (5) years after the Closing, Donee will acknowledge, in appropriate ways, including on-air acknowledgements, Donor and its collaboration with Donee that made possible the programming service provided on the Station, as set forth in more detail in **Schedule D – Acknowledgements**. At the end of the five (5) year period, Donee may continue to offer these acknowledgements but will be under no legal obligation to do so.

6. **WARRANTIES**. Because this transaction is a donation, Donor warrants only that (a) it is duly organized and validly existing under the laws of the State of New Mexico; (b) it has the requisite power and authority to execute and deliver this Agreement, to consummate the transactions contemplated hereby, and to comply with the terms, conditions and provisions hereof, and (c) the FCC License is validly issued by the FCC and in full force and effect in accordance with its terms. Other than the foregoing, Donor makes no representations or warranties of any kind with respect to the Donated Assets to be conveyed hereunder. Donee warrants that it is duly organized and validly existing under the laws of the State of New Mexico and that it is qualified to receive the Donated Assets, including the FCC License, and it has the requisite power and authority to execute and deliver this Agreement, to consummate the transactions contemplated hereby, and to comply with the terms, conditions and provisions hereof.

7. **LEGAL EXPENSES, CLOSING COSTS AND FILING FEES**. Each party shall be responsible for all costs and expenses incurred by it in connection with the negotiation, preparation, and performance of and compliance with the terms of this Agreement.

8. **GOVERNING LAW**. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of New Mexico.

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

10. **NOTICES**. Any notice pursuant to this Agreement shall be in writing and shall be deemed delivered on the date of personal delivery or electronic mail transmission or confirmed delivery by a nationally recognized overnight courier service, or on the third (3rd) day after prepaid mailing by certified U.S. mail, return receipt requested, and shall be addressed as follows (or to such other address as any party may request by written notice):

If to Donor:

New Mexico Junior College
Attention: Scotty Holloman, General Counsel
1 Thunderbird Circle
Hobbs, NM 88240

With a copy, which shall not constitute Notice, to

F. Scott Pippin, Esq.
Lerman Senter PLLC
2001 L Street, NW, Suite 400
Washington, DC 20036

If to Donee:

Eastern New Mexico University
Attention: Duane Ryan
1500 S Avenue K
Portales, New Mexico 88130

With a copy, which shall not constitute Notice, to:

Ernest T. Sanchez, Esq.
The Sanchez Law Firm, P. C.
1629 K Street N.W., Suite 300
Washington, DC 20006

11. **COVENANTS.** Donor and Donee hereby covenant and agree that between the execution date of this Agreement and the Closing, each party shall cooperate fully with one another in taking any commercially reasonable actions (including to obtain the required consent of the FCC) necessary to accomplish the transactions contemplated by this Agreement. Donor and Donee shall notify each other of all documents filed with or received from any governmental agency (including the FCC) with respect to the FCC Application, this Agreement, or the transactions contemplated hereby. Donor and Donee shall cooperate with the FCC in connection with obtaining the FCC Consent, and shall promptly provide all information and documents requested by the FCC in connection therewith. If either Donor or Donee becomes aware of any fact relating to it that would prevent or delay the FCC Consent, such party shall promptly notify the other party thereof and the parties shall use commercially reasonable efforts to remove any such impediment.

12. **CONTROL.** Donee shall not, directly or indirectly, control, supervise or direct the operations of the Station prior to the Closing. Such operations, including complete control and supervision of all programs, employees, finances, and policies, shall be the sole responsibility of Donor until the Closing.


13. **PUBLIC ANNOUNCEMENT.** Donor shall broadcast a public notice concerning the filing of the application for assignment of the FCC Licenses in accordance with the requirements of Section 73.3580 of the FCC's Rules. As to any other announcements, neither party shall issue any press release or public announcement or otherwise divulge the existence of this Agreement or the transactions contemplated hereby without prior approval of the other party hereto.

14. **TERMINATION.** This Agreement may be terminated by either party, by written notice to the other party, if the transactions contemplated herein have not closed by 12:00 p.m., December 31, 2023.

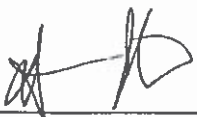
15. **FURTHER ASSURANCES.** After the Closing, each party shall from time to time, at the request of and without further cost or expense to, the other, execute and deliver such other instruments and take such other actions as may reasonably be requested in order to more effectively consummate the transactions contemplated hereby.

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

NEW MEXICO JUNIOR COLLEGE

By: 
Name: Dr. Derek Moore
Title: President

EASTERN NEW MEXICO UNIVERSITY

By: 
Name: Dr. James Johnston
Title: Chancellor