

WSU #18569

## MANAGEMENT AND PROGRAMMING AGREEMENT

THIS MANAGEMENT AND PROGRAMMING AGREEMENT is made this 16<sup>th</sup> day of March, 2010, by and between Clover Park Technical College ("Clover Park") and Washington State University, by and through Northwest Public Radio ("Manager").

### RECITALS:

WHEREAS, Clover Park is the Federal Communications Commission ("FCC") licensee of noncommercial educational radio station KVTI(FM), Channel 215 (90.9 MHz), Tacoma, Washington (FIN 12068) and its ancillary services (broadcast auxiliary remote pickups, studio-to-transmitter links, etc.) (the "Station");

WHEREAS, Manager is an experienced noncommercial station broadcaster and the licensee of multiple noncommercial educational FM Radio Stations, pursuant to authorization of the FCC;

WHEREAS, Clover Park and Manager desire that Manager undertake the management, programming and operation of the Station for, and under the supervision of, Clover Park;

WHEREAS, Clover Park expects that management by Manager will promote quality public radio programming over the facilities of the Station; and

WHEREAS, Clover Park and Manager wish to collaborate in ways that will advance the educational objectives of both parties.

NOW, THEREFORE, in consideration of the above recitals and mutual promises and other good consideration, the parties agree as follows:

### 1. MANAGEMENT

Manager hereby agrees to manage and operate the Station under the supervision and control of Clover Park. As FCC licensee, Clover Park shall at all times retain ultimate responsibility for the Station's essential functions, including its programming, finances and Station personnel employed by Clover Park. Subject to the foregoing limitations, the management services provided herein shall include all aspects of the operation and management of the Station, including, but not limited to, the production and acquisition of programming, administration of Station activities and personnel, engineering maintenance and support for Station facilities, financial management, accounting services, routine engineering services, and compliance with all applicable laws and regulations.

(a) **Programming.** Manager will program the Station for 24 hours per day, seven days per week (the "Programming") with a public radio station format. The Programming shall serve the needs and interests of the Station's community of license and further Clover Park's educational objectives. Manager will not change the format of the Programming without the prior consent of Clover Park. The Programming will comply with Clover Park's program

standards, set forth in Attachment 1, the Communications Act of 1934, as amended, the FCC's rules and all applicable content-related law for broadcast programming. Manager will be responsible for obtaining or maintaining any and all intellectual property rights, including copyright licenses, necessary for the broadcast of the Programming over the Station. Any listener complaints or FCC inquiry concerning the Programming shall be promptly reported to Clover Park. Clover Park shall have the right to preempt or reject any Programming if Clover Park, determines in its reasonable judgment, concludes that the Programming does not serve the public interest, or that alternate programming would better address local needs.

(b) **Delivery of Programming.** Manager shall deliver the Programming to the Station at Manager's cost and expense. Manager will be responsible for all costs and expenses incurred in connection with equipment for receiving Programming at the Station, including appropriate equipment for satellite reception, EAS compliance, transmitter remote control and confidence monitoring.

(c) **Financial Management.** Manager shall, in the manner consistent with FCC policies, reimburse Clover Park for Station operating expenses reasonably incurred by Clover Park, including, but not limited to, rent for Station's studios, as provided in Section 8(f) below, utility charges and expenses related to the maintenance and repair of the transmission facilities (but specifically excluding antenna tower and building maintenance expenses, which shall remain the responsibility of Clover Park); provided, however, that Clover Park shall bear full responsibility for the hiring, firing and compensation (without reimbursement by Manager) of the Station employees on Clover Park's payroll, including staffing and other requirements necessary to satisfy the FCC's main studio rules. Clover Park shall supervise Manager's financial management of the Station and Clover Park shall remain ultimately responsible for the finances of the Station, as required by FCC rules and policies.

## 2. TERM OF AGREEMENT

Unless sooner terminated in accordance with the provisions of this Agreement, this Agreement shall commence on June 1, 2010 and shall continue in full force and effect until June 1, 2013. Beginning on June 1, 2013, the Agreement shall automatically renew on a year-to-year basis unless either party provides at least thirty (30) days advance written notice to the other party of its intention to terminate the agreement.

## 3. TERMINATION

(a) Clover Park may terminate this Agreement: (i) immediately by giving written notice if, in the reasonable good faith discretion of Clover Park, the Station is operated by Manager in a manner contrary to the best interests of Clover Park, the public interest, convenience and necessity, FCC rules and regulations, the Communications Act of 1934, as amended, or other applicable law; or (ii) if Manager otherwise breaches its obligations under this Agreement, and Manager fails to cure such breach within thirty (30) days of written notice from Clover Park, or (iii) for convenience, upon 120 days written notice to Manager.

(b) Manager may terminate this Agreement: (i) immediately by giving written notice if, in the reasonable good faith discretion of Manager, Clover Park unreasonably frustrates or impedes effective management and programming of the Station by Manager; (ii) if Clover Park breaches its obligations under this Agreement and Clover Park fails to cure such breach within 30 days of written notice from Manager, or (iii) for convenience, upon 120 days written notice to Clover Park.

(c) Upon termination of this Agreement, Clover Park shall assume complete operational responsibility for the Station, and Manager shall be relieved of all obligations under this Agreement, except for: obligations incurred prior to the effective date of the termination; the obligation to provide a final accounting pursuant to Section 12 hereof; and the obligation to cooperate with Clover Park to wind up Manager's operation of the Station in an orderly fashion.

(d) If at any time during the Term of this Agreement, in the event that Clover Park determines to sell and/or assign the license for the Station to any other party or to arrange for the management/operation or programming of the Station by any other party, Manager shall have a right of first refusal to enter into such agreement, including the purchase or assignment of the Station as follows: Upon the receipt by Clover Park of any bona fide offer to purchase or take assignment of or to manage/operate or program the Station, which offer Clover Park determines to accept, Clover Park shall transmit a notice of the offer to Manager. The notice (i) shall contain the payment structure and a summary of all material terms of the offer, and (ii) shall offer to Manager the option to enter into agreement upon the terms and subject to the conditions of the proposed third party agreement as set forth in the notice. Manager shall then have the right for thirty (30) days to accept such offer. If after the thirty (30) day period Manager fails to accept the offer, its right as to that offer shall terminate and Clover Park may enter into an agreement with the original offering party on the same material terms and conditions as were offered to Manager. If Clover Park does not enter such an agreement with the original offering party, Manager's right of first refusal shall again apply for the balance of the period specified above. Manager agrees that the notice of the offer and all information disclosed in conjunction with the notice of the offer will be kept strictly confidential by Manager and its employees, agents, and attorneys and that confidentiality shall survive the termination of this Agreement for a period of one (1) year, except for disclosures required by applicable law or compulsory legal process or necessary to meet governmental reporting obligations.

(e) For 180 days prior to the end of each Term of this Agreement, Clover Park and Manager agree to negotiate in good faith exclusively with each other for the renewal of this Agreement and for the sale, assignment, or transfer of the Station to Manager.

#### 4. GRANTS/FUNDRAISING/MARKETING

(a) Grants. Clover Park agrees to cooperate with Manager in applying for grants, awards, contributions, donations, bequests, devises, legacies or other property or monies (hereinafter collectively referred to as "grants") regardless of nomenclature, for the use or benefit of the Station, including, but not limited to Corporation for Public Broadcasting ("CPB") grants, Public Telecommunications Facilities Program ("PTFP") grants, and any other grants applied for or received in the name of Clover Park and intended for the use and benefit of the Station;

provided that (1) Manager drafts for Clover Park's review and approval all applications or other documentation required by such grants; (2) Manager agrees to the terms and conditions of, and serves as fiscal agent for, such grants; and (3) Manager covers all administrative costs, such as audits or financial reports, required by such grants.

(b) Fundraising. Manager will conduct fundraising activities for the benefit of the Station, including but not limited to membership drives and program underwriting, in such manner as to raise sufficient funds for Manager to professionally manage and operate the Station in continuing consultation with Clover Park staff. Manager shall conduct all fundraising so as to comply with the rules and policies of the FCC applicable to noncommercial educational broadcast stations, including (with specificity) Section 73.503(d) of the FCC rules, and with IRS requirements for documenting charitable contributions.

5. LICENSE MAINTENANCE

Clover Park, as FCC licensee, has the ultimate responsibility with respect to all activities in connection with FCC license renewals, applications for facility changes and such other filings and reports as may be required by the FCC. Manager agrees to assist and advise Clover Park in all such activities and to prepare all necessary documents, filings and reports for the timely review and approval by Clover Park in consultation with Clover Park's own legal counsel.

6. RESPONSIBILITY OF FCC LICENSEE

Clover Park and Manager acknowledge and agree that the operation of the Station in compliance with all laws, rules, policies and regulations of the FCC is the ultimate responsibility of Clover Park, as licensee. Nothing in this Agreement shall be construed as limiting, transferring, assigning or relieving Clover Park of such responsibility. Clover Park and Manager acknowledge that their relationship requires a commitment on both parties' parts to the mission of the Station.

7. STANDARDS OF OPERATION

Manager agrees that it will manage and operate the Station consistent with industry standards for noncommercial educational broadcasting, so that the Station will provide quality service to the public, protect and enhance Clover Park's reputation, and comply with all legal requirements. Manager further agrees to manage and operate the Station, to the extent reasonably possible, in such a manner allowing the production and acquisition of radio programming of community value, and to combine these programs into a nonprofit radio service of high quality for broadcast to Tacoma, Washington and residents of Pierce County.

8. INSTITUTIONAL COOPERATION AND MEDIA PROMOTION

(a) Identification of Licensee. Manager will air station identifications that comply with the FCC's rules at the beginning and end of each time of operation and on the hour while the Station is on the air. Manager will identify Clover Park as the Station's licensee during each on-air identification, and, as feasible, in marketing or promotional materials that refer to the Station.

(b) On-Air Announcements About Licensee. In addition to FCC-required station identification announcements, Manager will air announcements over the Station that will provide information on Clover Park and its educational programs and opportunities, it being understood that Clover Park wishes to share in the goodwill generated from the operation of the Station. Such announcements shall air on KVTI and/or the Northwest Public Radio network of stations based on a schedule mutually agreed upon by Clover Park and Manager (not to exceed an airtime value of \$35,000 per year based on Manager's then-existing rate card for KVTI). All such announcements shall comply with FCC requirements and Manager's internal underwriting guidelines.

(c) Events/Performances. Clover Park and Manager will explore, in good faith, opportunities to co-present and co-promote events and performances for the general public and for Station donors in Tacoma utilizing the facilities of the Clover Park campus or other suitable local venues. By way of example, Manager will assist and collaborate with Clover Park on the planning and implementation of at least one performance or event at Clover Park's new conference center as a means to support the educational and cultural goals of the Station and of both institutions, and Manager shall evenly share the costs for reasonable performance/talent fees and airtime and other promotion of the event, as mutually agreed by the parties. Clover Park and Manager will also explore other opportunities that would provide mutual benefit to both parties, including, but not limited to, marketing, academics, promotions and fundraising.

(d) Faculty Presentation. Manager will arrange for a Washington State University faculty member to make a speech or presentation at Clover Park on a topic mutually agreed to by the parties. Manager will have the right to tape and/or air the speech or presentation over the Station and/or the Northwest Public Radio network of stations, at Manager's discretion.

(e) Limitations on Contracting Authority. The parties agree that all contracts for leases or services in excess of Fifteen Thousand Dollars (\$15,000) entered into by Manager under its management and operation of the Station shall be subject to approval of Clover Park.

(f) Lease of Studio/Office Space. The parties shall enter into a lease agreement pursuant to which Manager will pay Clover Park quarterly rent in the amount of \$5,000 per quarter (for a total annual lease value of \$20,000) for studio/office space suitable for Manager's use on the Clover Park campus. The lease will begin upon the commencement of the term of this Agreement, but rent for the first twelve months of the lease will be forgiven.

## 9. REPRESENTATIONS AND WARRANTIES

Manager represents and warrants that it will maintain its organization and operate in accordance with all laws and regulations applicable to state institutions of higher education in its State. Manager represents and warrants that it will manage, operate and program the Station in full compliance with all applicable laws, rules and policies, including intellectual property law.

## 10. INSURANCE

(a) During the term of this Agreement and any extensions or renewals thereof, Manager shall self-insure or cause to be insured the following types and amounts of insurance for:

- (1) Broadcast libel and errors/omissions insurance - at least \$1,000,000.
- (2) Commercial general liability - at least \$1,000,000.
- (3) Workers' compensation - as required by law.

(b) During the Term of this Agreement and any extensions or renewals thereof, Clover Park shall either self-insure or obtain insurance policies that insure Clover Park's employees, agents and representatives. Coverage shall include, but not be limited to, media liability covering liability arising out of any programming provided by Clover Park; comprehensive general liability insurance; workers compensation insurance covering Clover Park employees and agents who may visit the Station premises as needed; and property insurance covering damage to or risk of loss of Station equipment.

#### 11. CONSIDERATION

The parties acknowledge that their respective undertakings and commitments herein, designed to ensure the provision of high quality public radio programming on the Station, constitute sufficient consideration for this Agreement. After the initial three-year term of this Agreement, Clover Park and Manager shall endeavor to negotiate in good faith, an option agreement, pursuant to which annual option payments by Manager are credited to the possible purchase of the Station by Manager.

#### 12. RECORDS/ACCOUNTING

Manager shall keep full and adequate financial and accounting records of the Station's activities and make such records, including, but not limited to, bank records, ledgers, accounts, journals, and audits, available for inspection by representatives of Clover Park upon reasonable prior written notice. Within ten (10) business days after the end of each quarter or after reasonable request by Clover Park in conjunction with periodic campus accounting (including fiscal year end accounting), Manager shall provide to Clover Park a financial report, in a form reasonably acceptable to Clover Park, that accounts for all revenues and expenses attributable to the Station. Clover Park shall concurrently submit to Manager, and Manager shall promptly pay, an invoice for all Station expenses to be reimbursed to Clover Park. In the event of any dispute concerning a reimbursable expense claimed by Clover Park, Manager shall escrow the amount claimed by Clover Park until the claim is resolved. In the event the parties are unable to resolve the claim between them, they shall submit the matter to a mutually agreeable third party, whose decision shall be binding on both parties. Manager shall cause the operations and records of the Station to be audited periodically by an independent certified public accountant. Manager shall also cooperate with Clover Park's auditor as part of Clover Park's periodic audit, as may be reasonably requested by Clover Park and its auditor, including permitting ordinary audit procedures to be followed involving the books and records of Manager. Clover Park shall be responsible for ascertaining the programming needs of its community of license and maintaining the Station public inspection file in compliance with FCC requirements, provided, however, that

Manager shall provide advice and assistance with respect to the ascertainment of programming needs and shall provide Clover Park with all relevant documents and information required to be placed in the Station public inspection file.

13. RELATIONSHIP

During the term of this Agreement, subject to its terms and conditions, Manager is authorized to hold itself out as the manager and operator of the Station. Subject to the limitation set forth in Section 8(e), Manager is hereby authorized to enter into contracts for or on behalf of the Station in the ordinary course of business. Manager shall be responsible for all contracts and financial obligations that it has entered into on behalf of the Station, and shall include pertinent information regarding such contracts in Manager's quarterly financial reports described in Section 12.

14. OVERSIGHT AND CONTROL

Notwithstanding anything in this Agreement to the contrary, Clover Park shall retain and exercise oversight and control of the activities and operations of the Station. Without limiting the foregoing, Clover Park (through its governing board or the board's designated representative(s)) shall have the right: (a) to promulgate basic Station policies regarding personnel (but only to the extent such personnel are working on matters relating to the Station), finances and programming; (b) to direct the day-to-day activities of Clover Park's employees working at the Station (but only to the extent that such employees are working on matters relating to the Station); (c) to inspect the Station's facilities at any time during operation; (d) to consult with Station management, review FCC-required operating and maintenance records and procedures, and investigate operational complaints; and (e) to require written reports, in addition to the quarterly financial reports described above, no less often than on a yearly basis, including but not limited to, an audited financial statement of Station revenues and expenses for the year, a summary of the Station's programming service, and personnel actions (including EEO compliance). For purposes of clarity, Clover Park shall not have oversight or control of Manager's employees generally, but only to the extent that those employees are working on matters relating to the Station within the scope of this Agreement. The Station Manager of Northwest Public Radio shall be responsible for reporting to the Clover Park governing board or to the Clover Park officer(s) designated by Clover Park.

15. NOTICES

Any written notice to any party required or permitted under this Agreement shall be deemed to have been duly given on the date of personal service on or on the date of receipt by the party to whom notice is to be given, and shall be addressed to the addressee at the address stated below, or at the most recent address specified by written notice under this provision.

If to Clover Park:

Clover Park Technical College  
4500 Steilacoom Blvd., SW

Tacoma, WA 98499  
Attn: Amy Goings  
Phone: (253) 589-5845  
Email: amy.goings@cptc.edu

If to Manager:

Washington State University (NWPR)  
P.O. Box 642530  
Pullman, WA 99164-2530  
Attn: Kerry Swanson  
Phone: 509-335-6512  
Email: kerry\_swanson@wsu.edu

16. INDEMNIFICATION

To the extent permitted by Washington state law, Manager agrees to indemnify, defend, and save harmless Clover Park from loss, damage, or liability that may be caused by or arise from Manager's management or operation of the Station after this Agreement commences or from any acts or omissions by Manager relating to its obligations under this Agreement. At its option, Manager may repair or replace any Clover Park equipment, fixture or other tangible asset damaged or destroyed by Manager, or Manager's employees or agents. To the extent permitted by Washington state law, Clover Park agrees to indemnify, defend, and save harmless Manager from loss, damage, or liability that may be caused by or arise from Clover Park's operation of the Station before this Agreement commences, or related solely to the acts, or failures to act, by Clover Park after this Agreement commences, or Clover Park's obligations under the Agreement.

17. SEVERABILITY

If any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or any remaining provisions of this Agreement, provided that such remaining portions or provisions can be construed in substance to constitute the agreement that the parties intended to enter into in the first instance.

18. BINDING ON SUCCESSORS

This Agreement may not be assigned by either party without the other party's consent, which may be given or withheld in its sole discretion. Any attempted assignment without such consent shall be cause for immediate termination of the Agreement by the other party.

19. COMPLETE AGREEMENT

This Agreement contains the entire agreement of the parties with respect to the management and operation of the Station during the term hereof, and, except as specifically referred to herein, all prior obligations, proposals and agreements relating to the subject matter



hereof have been merged herein. This Agreement shall not be modified or amended except by agreement in writing duly executed by the parties hereto.

20. GOVERNING LAW

This agreement was made and entered into in the City of Tacoma, County of Pierce, State of Washington, and shall be construed in accordance with and governed by the laws of the State of Washington. The parties agree that any actions or proceedings arising directly or indirectly from this Agreement shall be litigated only in courts located in Pierce County.

21. ATTORNEYS FEES

In the event that any party employs attorneys to remedy, prevent or obtain relief from a breach or default hereunder, or contesting the validity hereof or any of the terms, covenants, provisions, or conditions hereof, or any of the matters referred to herein, the prevailing party shall be entitled to be reimbursed for all of its reasonable attorneys' fees, whether or not suit is filed, and including, without limitation, those incurred in each and every action, suit or proceeding, whether in courts of federal or state jurisdiction, and including bankruptcy cases and proceedings, including any and all appeals and petitions wherefrom and all fees and costs incurred.

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CONFIDENTIAL

**STATEMENT OF STATION POLICIES OF  
LICENSEE**

Clover Park Technical College ("Licensee"), Licensee of Radio Station KVTI(FM), Tacoma, Washington (the "Station"), hereby establishes the following standards, practices, policies and regulations to govern the broadcast of all programming aired over the Station. The following standards, practices and policies are to be adhered to in the preparation, writing, production and broadcasting of all advertisements and programs aired over the Station:

I. No Payola Or "Plugola". The mention of any business activity or "plug" for any commercial, professional or other related endeavor on the Station is prohibited, except where contained in an underwriting message that complies with the requirements of Section 399B of the Communications Act and Section 73.503 of the rules of the Federal Communications Commission ("FCC") and such message contains a sponsorship identification announcement which meets the requirements of Section 317 of the Communications Act and Section 73.1212 of the FCC's rules.

II. No Lotteries. Except as expressly permitted under Section 73.1211 of the FCC's rules, no announcements, messages or programs may be broadcast over the Station (without the express prior written approval of the Licensee) which give any information about or which promote any lotteries or games of chance, including any bingo games and the like, which are to be held by a local church or other non-profit institution or organization. A lottery, for these purposes, is a game or promotion in which a prize is awarded and where the selection of the winner or the amount or nature of the prize is determined in

whole or in part on the basis of chance, and where contestants enter the promotion by paying or promising any form of consideration (e.g., money, substantial time, or substantial energy).

III. Station Identification Announcements Required. A station identification announcement must be broadcast each time the Station goes on the air and when it signs off the air. A station identification announcement must also be broadcast each hour, as close to the top of the hour as feasible, at a natural break in programming, and shall comply with the requirements of Section 73.1201 of the FCC's rules.

IV. Contests and Promotions. In the event that the Programs contain information about any contest that the Manager conducts, the Manager shall comply with Section 73.1216 of the FCC's rules by fully and accurately disclosing the material terms of the contest and by conducting the contest "substantially as announced." No contest description shall be broadcast on the Station where the Manager knows that such description is false, misleading or deceptive with respect to any material term.

V. Obscenity and Indecency Prohibited. No obscene material may be broadcast over the facilities of the Station. No indecent material may be broadcast on the Station during any time when the airing of such programming would be contrary to law or FCC regulations or policies. For these purposes, "indecent" material is defined as language or material that describes sexual or excretory activities or organs in a patently offensive manner, as measured by contemporary community standards for the broadcast medium. Material will be considered obscene if (a) the average person, applying contemporary community standards, would find that the material appeals to the prurient interest, (b) it describes or depicts, in a patently offensive manner, sexual conduct as defined by

applicable state law, and (c) taken as a whole, it lacks serious literary, artistic, political or scientific value.

VI. Advertising. No advertisements as defined by Section 399B of the Communications Act and Section 73.503 of the FCC's rules, shall be broadcast on the Station.

VII. Defamatory Statements Prohibited. No statements known to be libelous or defamatory may be broadcast on the Station. Libel is a false statement of fact about a person, which tends to injure that person's reputation or otherwise cause injury or damages to that person.

VIII. "Equal Time" For Political Candidates. If a legally qualified candidate for public office is allowed to "use" (as defined in Section 73.1941(b) of the FCC's rules) the Station during his/her campaign, his/her legally qualified opponents must be afforded equal opportunities to appear on the Station.

IX. Sponsorship Identification Announcements. All sponsored programs must (a) contain an announcement stating the fact that the matter broadcast was sponsored, paid for, furnished by, or in support of the Station, and must disclose the true identity of the person or entity on whose behalf payment was made or promised for the broadcast, or (b) otherwise comply with Section 317 of the Communications Act and Section 73.1212 of the FCC's rules. Whenever such a sponsorship identification announcement is required, the announcement must be made both at the beginning and conclusion of each program of over five minutes in length. If a sponsored broadcast is five minutes or less in duration, only one such announcement is required, and it may be made either at the beginning or the conclusion of the broadcast or announcement.

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

CLOVER PARK TECHNICAL COLLEGE (CLOVER PARK)

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

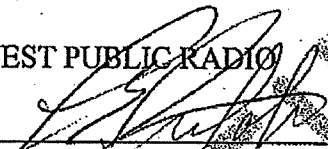
Title: \_\_\_\_\_

WASHINGTON STATE UNIVERSITY (MANAGER)

By: 

Title: Richard A. Heath  
Sr. Associate Vice President  
Washington State University

NORTHWEST PUBLIC RADIO

By: 

Title: Dean, Edward R. Marrow College of Communication

CONFIDENTIAL

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

CLOVER PARK TECHNICAL COLLEGE (CLOVER PARK)

By: *John W. Dalton*  
Title: President

WASHINGTON STATE UNIVERSITY (MANAGER)

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

NORTHWEST PUBLIC RADIO

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dean, Edward R. Murrow College of Communication