

## **SECOND AMENDED AND RESTATED MANAGEMENT AGREEMENT**

This SECOND AMENDED AND RESTATED MANAGEMENT AGREEMENT (as amended from time to time, this “Agreement”) is made and entered into as of \_\_\_\_\_, 2013 (the “Effective Date”), by and between NORTHERN NEW MEXICO RADIO FOUNDATION, a New Mexico nonprofit corporation (“NNMRF”), and SANTA FE COMMUNITY COLLEGE, a New Mexico state educational institution (the “College”). This Agreement amends, restates, supersedes and replaces, in its entirety, the Amended and Restated Management Agreement, dated July 29, 2011, between NNMRF and the College.

### **RECITALS**

WHEREAS, the College is holder of a Federal Communications Commission (“FCC”) license( the “FCC License”) for the non-commercial radio station KSFR, White Rock, 101.1 MHz FM (the “Station”) located in the premises described in Exhibit A to this Agreement (the “Licensed Premises”); and

WHEREAS, the College desires to engage NNMRF to undertake the management and operation of the Station for and on behalf of the College in furtherance of the College’s mission to serve the Santa Fe community; and

WHEREAS, NNMRF, in furtherance of its non-profit corporate purpose of operating a non-commercial radio station, desires to undertake the management and operation of the Station.

NOW THEREFORE, in consideration of the mutual covenants, undertakings and conditions set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties agree as follows:

### **ARTICLE 1. MANAGEMENT AND OPERATION OF THE STATION**

Section 1.1 General. During the term of this Agreement, NNMRF shall manage and operate the Station, continuously (24 hours per day, seven days per week, every day of the year), as a public, non-commercial, educational radio station in strict compliance with FCC rules and regulations applicable to the Station. NNMRF shall manage and operate the Station in a manner designed to serve the public interest and in a manner not intended to cause a negative financial impact on the College or harm the reputation of the College. NNMRF’s duties in connection with management and operation of the Station shall include, but not be limited to, production and acquisition of programming, employment and training of all Station personnel, maintenance of the Station’s books and records, preparation of capital and operating budgets for the Station, development of financial support to the Station from charitable and other sources, maintenance, repair and replacement of all Station equipment, furniture and fixtures and general administration of the Station and its activities. NNMRF shall be permitted to engage in ancillary activities related to the Station, including, but not limited to, sales of merchandise and other items and establishment of satellite broadcast locations.

Section 1.2 Maintenance, Repairs and Upgrades. The College shall bear the cost of all maintenance, repairs and upgrades required to be made to the Licensed Premises.

Section 1.3 Personnel. NNMRF shall provide all labor and professional, supervisory and managerial personnel as are required to perform its duties in accordance with this Agreement. All individuals employed by NNMRF shall be employees, independent contractors or volunteers of NNMRF, and their working hours, rates of compensation and all other matters relating to their employment shall be determined solely by NNMRF.

Section 1.4 College On-Air Access. NNMRF shall provide the College access to the Station's air-time for broadcasting of programs, announcements and events of the College at such times and on such terms as may be mutually agreed upon, in writing, by NNMRF and the College. The amount of air-time made available or allocated to the College shall not unreasonably interfere with NNMRF's own programming or its ability to obtain underwriting revenues necessary to the operation of the Station.

Section 1.5 FCC License Renewal. The College and NNMRF acknowledge and agree that the College, as the holder of the FCC License, bears the ultimate responsibility for renewal of the FCC License, applications for power increases and such other reports and filings as may be required by the FCC. Nothing in this Agreement shall be construed as limiting, transferring, assigning, or relieving the College of such responsibility. The foregoing notwithstanding, NNMRF shall, at its sole cost and expense, prepare and file all necessary renewal applications, reports and other documents with the FCC and other governmental entities having jurisdiction over the management and operation of the Station.

Section 1.6 No Payments Due. The College and NNMRF acknowledge and agree that, as of the date of this Agreement, neither party owes the other party any payment of funds or other property in connection with the Station, or the Licensed Premises, except for charges for services provided by the College to NNMRF as described in paragraph (d) of Article 3 below. NNMRF's sole compensation for the performance of its obligations under this Agreement shall be the rights to use the property described in Article 3 below. The College shall not be entitled to any payments from NNMRF from any source, including, but not limited to, fundraising and merchandise sales in connection with the Station.

Section 1.7 Furniture, Fixtures and Equipment. Any equipment, furnishings, fixtures or other property located in the Licensed Premises or used or acquired (by donation, purchase or otherwise) by NNMRF in connection with the Station is and shall be the property of NNMRF.

Section 1.8 Accounting. NNMRF shall keep full and adequate financial and accounting records of its activities in connection with the Station and make such records available for inspection by the College upon reasonable prior written notice. NNMRF shall cause its financial records and statements to be audited annually by an independent certified public accountant. NNMRF shall cooperate with the College's auditor as part of the College's annual audit, as may be reasonably requested by the College and its auditor, including permitting ordinary audit procedures involving the books and records of NNMRF.

**ARTICLE 2.**  
**TERM AND TERMINATION**

Section 2.1 Term. The term of this Agreement shall commence on the date this Agreement is executed by both parties hereto, shall run concurrently with the term of the FCC License (expiring October 1, 2013) and automatically shall be extended upon renewal of the term of the FCC License, unless this Agreement is terminated earlier as provided in this Article 2.

Section 2.2 Mutual Right to Terminate. The provisions of Section 2.1 notwithstanding, either party hereto may provide written notice to the other party hereto, at least six (6) months prior to the end of the then-current FCC License term, of that party's intent not to renew the term of this Agreement at the end of such FCC License term, in which event the term of this Agreement automatically shall terminate at the end of such FCC License term.

Section 2.3 College's Right to Terminate. The College may terminate this Agreement and NNMRF's rights to manage and operate the Station as follows:

(a) If the President of the College, in his or her reasonable discretion and upon the advice of counsel experienced in FCC matters, finds that the Station is being operated by NNMRF in a manner contrary to the requirements of the FCC Licenses or applicable laws, rules and regulations or in any other manner raising a substantial probability that, if continued, would cause a loss of the FCC License to the College or result in fines or penalties imposed upon the College, the College may terminate this Agreement upon written notice to NNMRF of the violation and the failure of NNMRF to cure such default within thirty (30) days after NNMRF's receipt of such notice, or, if not curable within thirty (30) days, within such period of time as is reasonably necessary, but in no event more than ninety (90) days, provided NNMRF diligently commences and pursues such cure and assumes all related costs, of whatever kind.

(b) If the Governing Board of the College, in its reasonable discretion, finds that NNMRF is operating the Station in a manner that is likely to have a negative financial impact on the College, the College may terminate this Agreement upon written notice to NNMRF and the failure of NNMRF to cure such default within twenty (20) days after NNMRF's receipt of such notice, or, if not curable within twenty (20) days, within such period of time as is reasonably necessary, but in no event more than sixty (60) days, provided NNMRF diligently commences and pursues such cure and assumes all related costs, of whatever kind.

(c) If the President of the College finds that NNMRF has failed to comply with any other term or condition of this Agreement, , the College may terminate this Agreement upon written notice to NNMRF and the failure of NNMRF to cure such default within sixty (60) days after NNMRF's receipt of such notice, or, if not curable within sixty (60) days, within such period of time as is reasonably necessary, but in no event more than one hundred twenty (120) days, provided NNMRF diligently commences and pursues such cure and assumes all related costs, of whatever kind.

**ARTICLE 3.  
LICENSE GRANT**

In exchange for NNMRF's agreements to manage and operate the Station as provided in this Agreement, the College grants to NNMRF an exclusive right and license to use the following premises, property and services of the College solely in connection with management and operation of the Station, at no charge or cost to NNMRF (except as provided below), during the term of this Agreement:

- (a) the Licensed Premises;
- (b) electric, water, sewer and gas utilities, heating, garbage and trash disposal, and janitorial services with respect to the Licensed Premises;
- (c) the College's West Alameda Tower for the purpose of emergency backup radio transmission by NNMRF in connection with the Station; and
- (d) the College's telecommunications information network (local and long-distance telephone service, electronic mail service, Internet access and related information technology support); mail service and delivery; non-routine requisition maintenance; and other College services not expressly provided for above in clauses (a) through (c); all to be charged to NNMRF at the standard rates (as adjusted from time to time) charged to other entities or organizations authorized to use the facilities of the College.

**ARTICLE 4.  
INSURANCE**

Section 4.1 NNMRF's Insurance. NNMRF, at its sole cost and expense, shall maintain in full force and effect throughout the term of this Agreement the following insurance coverage:

- (a) Broadcast libel insurance in the amount of at least \$1,000,000 per occurrence and in the aggregate;
- (b) General liability insurance in the amount of at least \$1,000,000 per occurrence and in the aggregate; and
- (c) Workers' compensation insurance as required by law.

All such policies of insurance shall (i) be obtained from a reliable insurance company licensed to do business in New Mexico; (ii) name the College as additional insured; and (iii) provide that the coverage may not be reduced or terminated without at least thirty (30) days' prior written notice to the College. Upon request from the College, NNMRF shall provide to the College copies of such policies of insurance.

Section 4.2 The College's Insurance. The College at its sole cost and expense, shall maintain in full force and effect throughout the term of this Agreement the following insurance coverage:

(a) General liability insurance in the amount of at least \$1,000,000 per occurrence and in the aggregate; and

(b) Property and casualty insurance covering the full replacement cost of the Licensed Premises.

All such policies of insurance shall (i) be obtained from a reliable insurance company licensed to do business in New Mexico; (ii) name NNMRF as additional insured; and (iii) provide that the coverage may not be reduced or terminated without at least thirty (30) days' prior written notice to NNMRF. Upon request from NNMRF, the College shall provide to NNMRF copies of such policies of insurance.

Section 4.3 Waiver of Subrogation. Anything in this Agreement to the contrary notwithstanding, NNMRF and the College each hereby waives any and all rights of recovery, claim, action, or cause of action against the other for any loss or damage to any property of NNMRF or the College, arising from any cause that (a) would be insured against under the terms of any property insurance required to be carried hereunder; or (b) is insured against under the terms of any property insurance actually carried, regardless of whether the same is required hereunder. The foregoing waiver shall apply regardless of the cause or origin of such claim, including but not limited to the negligence of a party, or such party's agents, officers, employees or contractors. The foregoing waiver shall not apply if it would have the effect, but only to the extent of such effect, of invalidating any insurance coverage of NNMRF or the College. The foregoing waiver shall also apply to any deductible, as if the same were a part of the insurance recovery.

## **ARTICLE 5. REPRESENTATIONS AND WARRANTIES**

Section 5.1 NNMRF. NNMRF represents and warrants to the College that, as of the date of this Agreement:

(a) NNMRF is a nonprofit corporation, duly organized and validly existing in good standing under the laws of the State of New Mexico;

(b) NNMRF is an organization exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), as set forth in a determination letter issued by the Internal Revenue Service;

(c) contributions to NNMRF are deductible by the contributors thereof under Section 170 of the Code;

(d) NNMRF has full power and authority to execute, deliver and perform its obligations under this Agreement; and

(e) the Board of Directors of NNMRF has approved the execution, delivery and performance of this Agreement by NNMRF.

Section 5.2 The College. The College represent and warrant to NNMRF that, as of the date of this Agreement:

(a) there are no outstanding FCC violations or notices of violation, or outstanding and unresolved citizen complaints asserting such violations with respect to the Station;

(b) the College has full power and authority to execute, deliver and perform its obligations under this Agreement; and

(c) the Governing Board of the College has approved the execution, delivery and performance of this Agreement by the College.

## **ARTICLE 6. INDEMNIFICATION**

Each of NNMRF and the College (an “Indemnifying Party”) agrees to indemnify, defend and hold harmless, to the fullest extent permitted by applicable law, the other party hereto and its directors, officers, employees, contractors and agents (each, an “Indemnified Party”) against and from all liabilities, obligations, suits, damages, penalties, claims, costs, charges and expenses, including, without limitation, reasonable attorneys’ fees and other professional fees (collectively, “Claims”), that may be imposed upon, incurred by, or asserted against any Indemnified Party and arising, directly or indirectly, out of or in connection with any act or failure to act on the part of the Indemnifying Party or its agents, employees, contractors, or invitees, except to the extent a Claim is caused by or arises from the gross negligence or willful misconduct of an Indemnified Party.

## **ARTICLE 7. GENERAL PROVISIONS**

Section 7.1 Relationship of the Parties. No partnership, joint venture, employment, agency, or other relationship is intended or created between NNMRF and the College by virtue of this Agreement. Neither party hereto is authorized to hold itself out in an way as representing the other party hereto or to enter into any contract on behalf of the other party hereto.

Section 7.2 Entire Agreement. This Agreement contains the entire agreement between the parties and supersedes all prior agreements, whether oral or written, between the parties with respect to the subject matter of this Agreement. Neither party will be bound by or be deemed to have made any representations, warranties, commitments or other undertakings with respect to the subject matter of this Agreement that are not contained in this Agreement.

Section 7.3 Assignment. The provisions of this Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of each party hereto. Neither the College nor NNMRF may assign its rights or obligations under this Agreement without the prior

written consent of the other party hereto. Any attempted assignment by a party hereto without such consent shall be cause for immediate termination by the other party hereto.

Section 7.4 Force Majeure. “Force Majeure Event” means an event, condition or circumstance beyond the reasonable control of the party affected, and which could not have been avoided by due diligence and use of reasonable efforts, which prevents the performance by such affected party of its obligations hereunder, including, explosion and fire (in either case to the extent not attributable to the negligence or willful misconduct of the affected party), flood, earthquake, storm or other natural calamity or act of God, strike or other labor dispute, terrorism, war, insurrection or riot. If either the College or NNMRF is rendered wholly or partially unable to perform its obligations under this Agreement (other than payment obligations) due to a Force Majeure Event, the party affected by such Force Majeure Event shall be excused from whatever performance is impaired by such Force Majeure Event, provided that the affected party promptly, upon learning of such Force Majeure Event and ascertaining that it will affect its performance hereunder, (a) promptly gives notice to the other party stating the nature of the Force Majeure Event, its anticipated duration, and any action being taken to avoid or minimize its effect and (b) uses its reasonable commercial efforts to remedy its inability to perform. The suspension of performance shall be of no greater scope and no longer duration than that which is necessary.

Section 7.5 Dispute Resolution. If any dispute or difference of any kind (a “Dispute”) arises between the College and NNMRF in connection with, or arising out of, this Agreement, the College and NNMRF shall attempt to settle such Dispute in the first instance through discussions. If the parties are unable to resolve the Dispute within 5 days of initiation of discussions, the parties shall then seek to resolve the Dispute through mediation. The parties shall mutually agree on a mediator and shall share equally in the cost of mediation. If the dispute is unable to be resolved through mediation within one month, either party may deliver notice to the other party of its intent to submit the Dispute to arbitration (the “Arbitration Notice”). The Arbitration Notice shall include the specific issues concerning the Dispute which must be resolved by the arbitration and shall be delivered by certified United States mail, postage prepaid, return receipt requested.

Any Dispute arising out of, or in connection with, this Agreement and not settled by discussion as described above shall be finally settled by binding arbitration conducted in accordance with the New Mexico Uniform Arbitration Act, Sections 44-7A-1 through -32 NMSA 1978 (the “Arbitration Act”). The hearing in any such proceeding shall take place in Santa Fe County, New Mexico. Any arbitration proceeding hereunder may, at either party’s option, be combined by consolidation, joinder or otherwise, with any other arbitration proceeding to which the College or NNMRF is a party as provided in Section 44-7A-11(a) of the Arbitration Act. The parties shall select an arbitrator by mutual agreement of the parties and if the parties are unable to agree upon an arbitrator, the arbitrator shall be chosen as follows: each of the College and NNMRF shall select a qualified arbitrator, the arbitrators so chosen shall select a third qualified arbitrator and the third arbitrator shall conduct the arbitration of the Dispute. The prevailing party in any arbitration proceeding hereunder shall be entitled to recover from the other party all costs and expenses incurred by the prevailing party in relation to the arbitration proceeding, including, without limitation, reasonable attorneys’ fees, arbitration filing fees, arbitrator compensation, expert witness fees, court reporter expenses and document

reproduction charges. The prevailing party shall be determined by the arbitrator based on the surrounding facts and circumstances and not based on whether one party received a monetary award in its favor.

During the pendency of any Dispute or arbitration, NNMRF and the College shall continue to perform their obligations under this Agreement.

Section 7.6 Amendments. No amendments or modifications of this Agreement shall be valid unless evidenced in writing and signed by duly authorized representatives of both parties.

Section 7.7 Survival. Notwithstanding any provisions herein to the contrary, the obligations set forth in Article 6 and Section 7.5 shall survive in full force despite the expiration or termination of this Agreement.

Section 7.8 No Waiver. It is understood and agreed that any delay, waiver or omission by the College or NNMRF with respect to enforcement of required performance by the other under this Agreement shall not be construed to be a waiver by the College or NNMRF of any subsequent breach or default of the same or other required performance on the part of the College or NNMRF.

Section 7.9 Notices. All notices and other communications (collectively "Notices") required or permitted under this Agreement shall be in writing and shall be given to each party at its address set forth below or at such other address as may be provided in accordance with this Section 7.9. All Notices shall be (a) delivered personally, (b) sent by fax, electronic mail, registered or certified United States mail (return receipt requested and postage prepaid), or (c) sent by a nationally recognized overnight courier service. Notices shall be deemed to given (i) when transmitted if sent by fax or electronic mail (provided the transmittal is confirmed), or (ii) upon receipt by the intended recipient if given by any other means. Notices shall be sent to the following addresses:

To the College:

Santa Fe Community College  
6401 Richards Avenue  
Santa Fe, New Mexico 87508  
Attention: President  
Fax: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

To NNMRF:

Northern New Mexico Radio Foundation  
6401 Richards Avenue  
Santa Fe, New Mexico 87508  
Attention: President  
Fax: \_\_\_\_\_  
E-Mail: \_\_\_\_\_



Section 7.10 Governing Law. This Agreement is executed and intended to be performed in Santa Fe County, New Mexico, and the laws of the State of New Mexico shall govern its construction, interpretation and effect.

Section 7.11 Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the rest of this Agreement shall remain in full force and effect and in no way be affected, impaired or invalidated.

Section 7.12 Counterparts. The parties may execute this Agreement in multiple counterparts, each of which shall be deemed an original and all of which, together, shall constitute one and the same instrument.

[Signatures follow.]

IN WITNESS WHEREOF, the parties have executed this Agreement through their duly authorized officers as of the date set forth in the preamble to this Agreement.

**SANTA FE COMMUNITY COLLEGE**

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

**NORTHERN NEW MEXICO RADIO  
FOUNDATION**

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

**EXHIBIT A**  
**LICENSED PREMISES**

[THIS WILL BE A SITE PLAN, MAP OR SOME OTHER DESCRIPTION OF THE SPACE OCCUPIED BY NNMRF AT THE COLLEGE.]