

**Alameda Community Radio (KACR-LP) – AUSD (Encinal High School KJTZ-LP) Joint Use Agreement**

WHEREAS, Alameda Community Radio (“ACR”) is a not-for-profit corporation formed under the laws of California, and is based in Alameda; and

WHEREAS, ACR is committed to operating a low power FM radio station (quoting its Mission Statement) “dedicated to serving the geographically, historically and culturally distinct city of Alameda”; and

WHEREAS, Alameda Unified School District (“AUSD”) is a School District organized under the constitute and laws of the State of California, which in the words of its Mission Statement, “works hard to provide every student with a world-class education that strives for excellence and equity”; and

WHEREAS, AUSD has received a license to operate an LPFM radio station from the FCC (FCC File # 20170303AB) (Facility ID Number 195391); and

WHEREAS, ACR has received a license to operate an LPFM radio station from the FCC (FCC File #20170821AAD) (Facility ID Number 194947); and

WHEREAS, Poor Magazine has also received a license to operate an LPFM station from the FCC for Channel 241 (96.1 FM) (FCC File Number 20171013AHG); and

WHEREASE AUSD, ACR and Poor Magazine have entered into a Timeshare agreement; with respect to Channel 241; and

WHEREAS, pursuant to section 17527 et seq. of the California Education Code, AUSD is empowered to enter into joint use agreements with nonprofit organizations under certain specific conditions; and

WHEREAS, pursuant to section 17529 of the California Education Code, the governing board of AUSD has found that the joint use outlined in this Agreement will not interfere with the educational program or activities of any school or class, unduly disrupt the residents in the surrounding neighborhood, or jeopardize the safety of the children of the school; and

WHEREAS, ACR and AUSD have successfully shared transmitter and studio space since going on the air on March 6, 2017, increasing community radio programming and creating a new Career Technical Education pathway for Encinal students; and

WHEREAS, ACR and AUSD (hereinafter the “Parties”) wish to continue to share resources for the purpose of better serving AUSD students and faculty and the broader Alameda community, and desire to continue to agree upon and share costs of this project;

NOW IT IS AGREED AS FOLLOWS:

1. ANTENNAE AND TRANSMITTER: The Parties agree to continue to share the use of the transmitter and antenna provided by ACR, and located at the top of the building at 2312 Alameda Avenue, Alameda, California, pursuant to ACR’s Agreement with the Masonic Hall Association of Alameda. In the event of a termination of ACR’s agreement by the Masonic Hall Association ACR will use its best efforts to find an alternate location acceptable under FCC rules. In that unlikely event the Parties will share equally the cost of moving the transmitter and the antenna, (and if necessary modifying the antenna)..
2. PRODUCTION FACILITIES, CLASSROOM, STUDIOS: AUSD agrees to continue to share with ACR the duplicate radio studios, both capable of originating programming and for use as production studios located on the Encinal High School Campus at 210 Central Ave, Alameda, CA 94501 (hereinafter “the Property” or “the Studio”) subject to terms, provisions, conditions and agreements set forth herein:
  - a.) Links. The Parties have shared the cost of a Studio-to-Studio Transmitter Link (STL) and Emergency Alert System (EAS) equipment.
  - b.) Switching. The Parties agree to continue and modify if necessary technical arrangements for switching on and off the transmitter from the Studio location, or remotely, at such times as the frequency is to be used by Poor Magazine, as provided in the Timeshare Agreement among the Parties & Poor Magazine, as approved by the FCC, or by amendments to the schedule lawfully filed with the FCC.

- c.) Studio Space. AUSD will continue to provide and maintain the Studio/production facility.
- d.) Studio Environment. AUSD agrees to maintain the HVAC necessary for the Property and to ensure that AUSD and its students leave the studio in a neat and clean condition.
- e.) Shared Use. The parties will cooperate in the use of the facilities as follows:
- i. On Air Periods. Each Party will be the primary user (though not exclusive) during the hours assigned to them under the Time Share Agreement. Each shall have preparation access for the 60 minutes before and after their assigned air time, that is The Parties agree that up to one hour before the other Party is due to go on the air and for one hour after their air time that Parties' personnel may enter and use the Property to prepare for or take down from their programming. During said time ACR commits to minimize disruption to any AUSD activities taking place on the Property at that time. AUSD commits to minimize disruption to any ACR activity to the extent possible in a school environment.
- ii. Off Air Periods. For all times not referenced in section e) i above AUSD will establish a studio reservation system under which either party may reserve use of the studio for up to a three hour block of time. If a party wishes to reserve the studio for more than three hours at a time, or for more than six hours on a given day, it shall give the other party forty-eight (48) hours advance notice. If the party given notice does not make a reservation for the period contained in the notice the initial party shall be entitled to increase their reservation accordingly.
- f.) Public Access to Studio. The Parties will cooperate in meeting their commitment to the FCC to have the studio open to the public no less than 20 hours per week. During times school is in session, such hours will occur on weekends or between the hours of 7 AM to 12 AM. ACR shall have responsibility for scheduling public access hours on non-school days and holidays.
- g.) Joint Committee. The Parties agree to continue to hold regular joint committee meetings to set policy for accommodating the facility use and programming needs of AUSD & ACR. The committee shall consist of no less than two representatives appointed by the

ACR Board and no less than two appointed by the Superintendent of Schools of AUSD. Committee meetings shall be scheduled at mutually agreeable times as necessary or advisable through the year. Either party may propose a reasonable time and place for the Joint Committee to meet.

- h.) Equipment. AUSD agrees to continue to equip the studio with appropriate audio and radio equipment and to maintain it in proper working order. ACR agrees to continue to operate the transmitter referenced in section 1 above. As technology changes each party shall be responsible for providing reasonably state of the art equipment appropriate to the uses under this agreement.
  - a) Computers: AUSD IT personnel shall be responsible to ensure that each computer used pursuant to this project maintains at least 15% open drive space.
  - b) AUSD shall be responsible for the maintenance of the integrity of ACR data or information stored on the computer systems,
  - c) ACR shall be provided with Administrative Log In for all computers.
  - d) ACR shall receive 72 hours advance notice of any maintenance or software change activity with respect to the Computer systems in use hereunder. Such notice shall be sent to [tech@alamedacommunityradio.org](mailto:tech@alamedacommunityradio.org).
- i.) Bathrooms. AUSD agrees to make the toilets on the 600 wing of the main Encinal campus accessible for the users of the facility.
- j.) Security Doors. AUSD will continue to provide keycard access to the exterior doors to the Studio for ACR members who are approved by ACR Board Chair and who complete AUSD's LiveScan and TB medical clearance; AUSD will continue to maintain a keypad security code that ACR members will receive to enable access the studios.
- k.) Access. Subject to AUSD policy governing visitors to school sites and any other facility security or safety rules that AUSD reasonably requires, ACR will have access to the Property as needed to meet its operational requirements and studio use rights, as set forth above. ACR shall receive such access free of charge. ACR will receive no less than thirty days advance notice in any change in AUSD visitor policies affecting all visitors to

AUSD school sites. Regardless, AUSD agrees to continue to share with ACR the duplicate radio studios.

- l.) Utilities. AUSD shall provide utility connections to the Property, including gas, electricity, Internet, and other public utilities during the term of this agreement. AUSD shall also provide janitorial services for the Property. ACR shall bear the costs of utilities and services at the transmitter site. AUSD shall bear the cost of utilities and services at the studio.
- m.) Repairs and Maintenance. During the term of this agreement and any renewal or extension of the term, AUSD shall keep the exterior roof, exterior painting and cosmetic appearance, sidewalls, electrical system, plumbing, HVAC (heating, ventilating, air conditioning), structural supports, and foundation of the building on said Property at AUSD's cost and expense. AUSD shall not be liable for any repairs that are rendered necessary by the negligence of or abuse of such property by ACR or any employees, or agents, or for any repairs necessitated by the failure of ACR to give notice to AUSD of the need for repairs to be made with reasonable dispatch.
- n.) Signs. Subject to the approval of AUSD, which shall not be unreasonably withheld, ACR may erect and maintain signs pertinent to its normal business operations, provided such signs comply with all legal constraints thereupon, are removed at ACR's sole cost and expense upon termination of the agreement without damage to the Property, and do not advertise any business other than the hereby permitted use.
- o.) Insurance. ACR agrees to carry general liability insurance with limits no less than \$1,000,000 and to name AUSD as an additional insured on such policy. AUSD shall name ACR as an additional insured on any insurance policy it has which relates to broadcast operations and premises liability.
- p.) Fingerprinting. ACR agrees that all ACR officers, employees, and agents who may have regular contact with AUSD pupils during the term of this Agreement, shall be fingerprinted consistent with the fingerprinting and criminal background investigations

required by Education Code Section 45125.1. ACR understands that the California Department of Justice must determine that none of those persons have been convicted of a serious felony, as that term is defined in Education Code Section 45122.2. The Livescan fingerprinting requirement shall not apply to radio or other guests or occasional hosts.

- q.) TB Clearance. ACR agrees that all ACR officers, employees, and agents who may have regular contact with AUSD pupils during the term of this Agreement, shall submit a letter to AUSD Human Resources Department from their healthcare provider stating that the individual is not at risk of carrying Tuberculosis. The TB Clearance requirement shall not apply to radio or other guests or occasional hosts.
- r.) Removal of Persons from the Property. In the event that AUSD, in its sole discretion, at any time during the term of this Agreement, requires for good cause the removal of any ACR affiliated persons, employees, representatives, or agent from an AUSD school site and/or property, ACR shall immediately upon receiving notice from AUSD take such action as it can to cause the removal of such person or persons.
- s.) Access to Studios. ACR Board Chair will notify AUSD via email when a new officer or member is eligible to receive an AUSD keycard access badge that will provide entry to the radio studios. AUSD will provide the badge in a timely manner once the Livescan record and TB Clearance is received. ACR Board Chair will notify AUSD via email when an individual in possession of an AUSD keycard access badge resigns or a member terminates their membership. Once notified, AUSD will deactivate that individual's keycard access. ACR Board Chair or designated officer will make a good faith effort to return that individual's badge to AUSD.
- t.) Indemnification.

ACR agrees to hold harmless, indemnify, and defend AUSD and its officers, agents and employees from any and all losses accruing or resulting from injury, damage, or death of any person, firm, or corporation in connection with its failure to perform its obligations under this Agreement. ACR also agrees to hold harmless, indemnify, and defend AUSD and its elective board, officers, agents, and employees from any and all claims relating to loss incurred by any supplier, contractor, or subcontractor furnishing work, services, or

materials to ACR in connection with the performance of the Agreement. This provision survives termination of this Agreement.

(i) AUSD agrees to hold harmless, indemnify, and defend ACR and its officers, agents and employees from any and all losses accruing or resulting from injury, damage, or death of any person, firm, or corporation in connection with its failure to perform its obligations under this Agreement. ACR also agrees to hold harmless, indemnify, and defend AUSD and its elective board, officers, agents, and employees from any and all claims relating to loss incurred by any supplier, contractor, or subcontractor furnishing work, services, or materials to ACR in connection with the performance of the Agreement. This provision survives termination of this Agreement.

s.) Limitation of Liability. Other than as otherwise provided herein, the limitation of either Party's liability for any breach hereof, shall be actual damages.

### 3. BROADCAST OPERATIONS.

a.) The Parties recognize that being in a crowded broadcast market they have are entered into a Time Share agreement with one other Licensee, to wit "POOR" Magazine (FCC Application 20131115ANY), the Parties recognize that changes to the time commitments are subject to written agreement with Poor Magazine and proper filing with the FCC.

b.) Broadcast time shall be allocated in accordance with the current FCC-approved Time Share Agreement or with any duly executed and filed with the FCC revision thereof.

c.) Licensee Responsibility. Each Party recognizes that under applicable FCC regulations and under the communications act of 1934 as amended, the licensee on air at any given time, must retain control over the content broadcast by the LPFM station. Each Party shall at all times have a Program Director who shall be primarily responsible for air sound and shall be the primary liaison with the other Party with respect to over the air broadcasting.

d.) Applicable Regulations. Each Party hereto agrees to familiarize itself with applicable broadcast regulations as contained in 47 CFR and elsewhere.

4. EFFECTIVE DATE. This agreement shall become binding and effective upon the approval of both the Board of Directors of ACR and the Board of Education of AUSD.
5. TERM AND TERMINATION.

- (a) The term of this agreement shall be through June 30, 2021

The parties will encourage the prompt and equitable settlement of any controversies or claims between them. In the event of a dispute, after notice and opportunity to cure, setting forth a reasonable time period for cure, the parties agree to negotiate their differences directly and in good faith for a period of no less than thirty (30) days after the period for an opportunity to cure, and receiving written notification of the continued existence of a dispute. If the dispute is not resolved with thirty (30) days after such written notification the parties If, after good faith negotiations and any mutually agreed upon mediation, the dispute is not resolved, the parties are free to take judicial action.

APPROVED:

By Board of Directors of ACR on \_\_\_\_\_

Attest: \_\_\_\_\_

Patrick Simms, ACR Board Chair

Approved by Board of Education of AUSD on \_\_\_\_\_

Attest: \_\_\_\_\_

Mia Bonta, Board President AUSD