

EQUIPMENT LEASE AGREEMENT

This Equipment Lease Agreement dated this 13th day of February, 2020 by and between The University of Memphis ("University") and Crosstown Radio Partnership, Inc. ("CRP") (the "Agreement").

WHEREAS, University and CRP are entering into an Asset Assignment Agreement of the same date (the "Assignment Agreement") pursuant to which University shall assign certain assets to CRP, including but not limited to the licenses, permits and other authorizations issued by the Federal Communications Commission ("FCC") for FM radio broadcast station WUMR, Memphis, Tennessee, Facility Id. No. 66625, broadcasting on 91.7 MHz (the "Station");

WHEREAS, University and CRP, along with Crosstown Cooperative Redevelopment Association, Inc., and Memphis Fourth Estate, Inc., have entered into a Radio Station Contribution Agreement of the same date (the "Contribution Agreement") pursuant to which all parties shall contribute certain assets and perform certain services for CRP after Closing (as that term is defined in the Assignment Agreement); and

WHEREAS, University agrees to lease certain equipment to CRP, for its operation of the Station, as more fully set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants, understandings, and obligations set forth herein, the Parties agree as follows.

- 1) Lease. University hereby leases to CRP and CRP hereby leases from University those certain items and equipment necessary to or useful for the Station broadcast transmission as set forth on the Equipment List, attached hereto as Exhibit A (the "Equipment").
- 2) No Warranty of Fitness. CRP acknowledges that the Equipment is not new, and understands and agrees that the University makes no warranty or statement of any kind as to the condition, fitness, suitability to any purpose, soundness, safety, usefulness, compliance with any federal, state, or local law, rule or regulation, or any other statement about the Equipment or its use. CRP acknowledges that said Equipment may have been modified from manufacturer's original design, whether by intent or not, and that they should not and will not rely on knowledge of similar products in evaluating said Equipment. Notwithstanding the foregoing, University is not aware of any defect in the design or performance of any Equipment.

CRP accepts the Equipment, in its present condition, without qualification.

Each Party shall be solely liable for payment of its portion of all claims, liability, costs, expenses, demands, settlements, or judgments resulting from the negligence, actions or omissions of itself or those for whom it is legally responsible relating to or arising under this Agreement. Neither Party shall have a duty or obligation of indemnification to the other.

3) Insurance Requirements. The following insurance is required with these minimum limits of liability:

- a. General Liability - \$1,000,000 CSL per occurrence / aggregate
- b. Workers Compensation - Statutory
- c. Employers Liability - \$1,000,000
- d. Property Insurance for the replacement value of the Equipment.

CRP must and will provide proof of insurance through the issuance of a certificate of insurance showing the above coverages and limits specified. If CRP carries higher liability limits, such limits must and will be shown on the certificate. University has the right to demand a certified copy of any insurance policy. Certificates must be filed with the University before CRP will be sent (or can take possession of) the Equipment.

CRP is required to and will add University to its General Liability and Employers Liability insurance policies with the following wording "The University of Memphis, including its current and former trustees, officers, directors, employees, agents, and assigns is added to this policy as additional insured."

This insurance requirement shall not be construed as limiting in any way the extent to which CRP may be held responsible for the payment of damages to any persons resulting from its operations or the activities of any person or persons for whom it is liable.

The Property Insurance must cover the property for "all risks of physical loss or damage". CRP agrees that it will replace any lost or damaged equipment or software without deduction for any wear or tear, new for old. If the Equipment is no longer replaceable due to obsolescence, CRP agrees that they will replace the Equipment with the current equivalent of the Equipment or better.

4) Duration of the Lease Agreement. The term of this Agreement will coincide with the term of the Contribution Agreement. The Agreement will terminate concurrently with termination of the Contribution Agreement, provided the party, if any, terminating the Contribution Agreement is not in material default of the Contribution Agreement, and all then-leased Equipment shall be returned to University in accordance with the terms herein. It is understood and agreed that CRP assumes all responsibility for all costs associated with shipping the Equipment to and from its place of business. Subject to the provisions of Section 6, *infra*, for any certain piece of Equipment, its lease shall further terminate in the event that CRP determines in its reasonable discretion, that such piece is past its useful life and in need of replacement. University shall have no obligation to provide a substitute or replacement piece of Equipment unless the need for such substitution or replacement is caused by the negligent act or omission of University's personnel.

CRP agrees that the University may request the return of the Equipment at any time, for any reason or no reason, and that CRP will return all of the Equipment within a reasonable amount of time, once CRP has obtained and installed such Equipment as may be necessary to continue the Radio Station's broadcasting.

If the Equipment is not returned by the date stipulated above, or the Equipment is not returned promptly upon request, CRP agrees that they will reimburse the University for any expense that the University may incur in securing substitute equipment, whether by rental or purchase, and still be obligated to return the leased Equipment.

- 5) Licensing. University hereby affirms that no violation of any licensing terms, copyright agreements or any other restrictions on the use of the Equipment or software imposed by Equipment or software manufacturers has occurred and that leasing the Equipment to CRP does not constitute a violation of any of those terms or restrictions. CRP agrees that it will not violate any licensing terms, copyright agreements or any other restrictions on the use of the Equipment or software that the Equipment or software manufacturers may have imposed. CRP acknowledges and agrees that it is responsible to know and understand all terms of use.
- 6) Condition of the Equipment. CRP agrees that it will return the Equipment in the same condition that it was in when it left the University, ordinary wear and tear excepted. If CRP needs to repair any equipment during the course of its use, it will do so at its own expense, and will be obligated to return the Equipment to the University at the end of the Agreement. In the event that any Equipment must be replaced due to the negligent act or omission of CRP, CRP shall, at the end of the Agreement, provide University such replacement piece of Equipment. If University determines that the Equipment is not in the same or better condition that it was when it left University, it may repair or replace any piece or part of the Equipment and CRP will pay the cost upon receipt of a bona fide invoice. Nothing contained herein shall prevent CRP from deciding in its own discretion to upgrade any equipment and return any Equipment leased hereunder to University, which such return will be construed to terminate this Lease as to any such piece of returned Equipment.
- 7) Access to Equipment. Regardless of the location of any of the Equipment on the property of University or CRP, each Party shall have the rights to access and inspect any Equipment located on the Property of the other. While the party wishing to access and inspect shall provide reasonable notice to the other Party, University acknowledges that there may be times when, due to emergency technical difficulties (e.g. nonoperational transmitter) with Equipment located on its property, CRP and its agents may need immediate access to such Equipment and the property on which it is located. The parties agree to cooperate on the preparation of procedures and lines of communication necessary to allow such emergency access to University-located Equipment.

- 8) Notice. All communication regarding the subject of this Agreement, including the Equipment, shall be between:

To University:

Dr. Anne Hogan
The University of Memphis
College of Communication and Fine Arts
232 Communication and Fine Arts Bldg.
Memphis, TN 38152
Phone: 901-678-2350
Fax: 901-678-5118
Email: anne.hogan@memphis.edu

with a copy to:

Office of Legal Counsel
The University of Memphis
201 Administration Building
Memphis, TN 38152
Attn: David Cooley
Email: decooley@memphis.edu

To CRP:

Crosstown Radio Partnership, Inc.
Robby Grant
65 Union Avenue, Suite 500
Memphis, TN 38103
Email: robbyg@gmail.com

with a copy to:

Casey Shannon
2900 One Commerce Sq.
40 S. Main St.
Memphis, TN 38103
Email: cshannon@lewisthomas.com

- 9) Severability. The terms of this Agreement are severable such that if any term or provision is declared by a court of competent jurisdiction to be illegal, void, or unenforceable, the remainder of the provisions shall continue to be valid and enforceable.
- 10) Assignment. CRP may not assign this Agreement (or lend or lease or give the Equipment) to any other party without the prior written consent of the University.
- 11) Choice of Laws / Jurisdiction. The laws of the State of Tennessee shall govern the validity, construction and effect of this Agreement. Any claim brought against University shall be within the exclusive jurisdiction of the Tennessee Claims Commission. Any claim brought against CRP shall be brought in a court of competent jurisdiction within the State of Tennessee.

12) Entire Agreement. This Agreement constitutes the entire agreement and there are no oral or other representations regarding the subject of this Agreement that are binding on either party. All changes to this Agreement must be in writing, signed by both parties.

The individuals signing below hereby represent and warrant that they are duly authorized to execute and deliver this Agreement on behalf of themselves or their organization and that this Agreement is binding upon each party in accordance with its terms.

CROSSTOWN RADIO PARTNERSHIP, INC.

UNIVERSITY OF MEMPHIS

By: 

By: _____

Name: Pat Mitchell Worley

Name: _____

Title: President

Title: _____

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CROSSTOWN RADIO PARTNERSHIP, INC.

UNIVERSITY OF MEMPHIS

By: _____

By:  _____

Name: _____

Name: M. David Rudd

Title: _____

Title: President