

MCS 11/12/20
November

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made as of ~~December~~ 18, 2020, between **The First Unitarian Society of Madison** ("Seller") and **Cow-Power Media Productions Company** ("Buyer").

WHEREAS Seller owns Low Power FM Radio Station, WMUU-LP (Facility Identification Number 197230), licensed to Madison, Wisconsin ("Station") pursuant to authorization granted by the Federal Communications Commission ("FCC");

WHEREAS Buyer desires to acquire certain assets and rights used, useful, or intended to be used, in the operation of the Station, and to secure an assignment of the licenses and other authorizations issued by the FCC for such operation ("collectively, "Assets"), and Seller desires to sell, assign, transfer, and convey such Assets to Buyer; and

WHEREAS Subject to the terms and conditions set forth in this Agreement, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Assets, as defined in this Asset Purchase Agreement ("Agreement").

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties, intending to be legally bound, hereby agree as follows:

1. Stations' Assets. On the terms and subject to the conditions hereof, at Closing (defined below), Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase and acquire from Seller, all right, title and interest of Seller in and to the following assets, properties, interests and rights of Seller which are used in the operation of the Station:

(a) all licenses, permits and other authorizations issued to Seller by the FCC with respect to the Station, described on *Schedule 1.1(a)* ("FCC Licenses"), together with any renewals or modifications thereof between the date hereof and Closing and including the right to use the Stations' call letters;

(b) any tangible personal property (if any) listed on *Schedule 1.1(b)* ("Tangible Personal Property");

(c) the lease agreements (the "Tower Lease"), as identified and described in *Schedule 1.1(c)* hereto;

(d) the intellectual property and intangibles identified and described in *Schedule 1.1(d)* hereto;

(e) all files, documents and records (or copies thereof) related to operation of the Station.

The Assets shall be transferred to Buyer free and clear of liens, claims and encumbrances ("Liens").

2. Assumed Obligations. At Closing, Buyer shall assume the obligations of Seller arising from and after the Closing Date (defined below) under (a) the FCC Licenses, and (b) the Tower Leases (collectively, the “Assumed Obligations”), expressly limited to those related to operations of the Station. Except for the Assumed Obligations, Buyer does not assume, and will not be deemed by execution and delivery of this Agreement or the consummation of the transactions contemplated hereby, to have assumed, any other liabilities or obligations of Seller, whether or not disclosed to Buyer.

3. Consideration. In consideration for the sale of the Stations’ Assets to Buyer, and the Buyer’s assumption of Assumed Obligations, the Buyer shall pay Seller one dollar (\$1.00) (“Purchase Price”) and provide Seller with the right to name one member to the Station’s non-governing community advisory board (“Advisor”). The Advisor shall have no binding influence on Station programming, finances personnel or similar Station governance decisions that, under FCC rules, implicate “control” or “attribution,” as defined in FCC Rules or the Communications Act of 1934, as amended (“Act”).

4. Assignment Application. Within five (5) business days of the execution of this Agreement, Buyer and Seller shall file an application with the FCC requesting Grant to the assignment of the FCC Licenses from Seller to Buyer (“Assignment Application”). The FCC’s consent to the assignment of the FCC Licenses contemplated hereby without any material adverse conditions other than those of general applicability is referred to herein as the “Grant.” Seller and Buyer shall make commercially reasonable efforts to obtain the Grant. Each party shall promptly provide the other with a copy of any pleading, order or other document served on it relating to such application and shall furnish all information required by the FCC.

5. Legal and Binding Agreement. This Agreement is, a legal, valid and binding agreement enforceable in accordance with its terms.

6. Tower Leases. At Closing, Buyer shall assume the Tower Leases, as more fully described in *Schedule 1.1(c)* hereto, as to which Seller is the lessee. The assumption of the Tower Leases shall be a condition to Closing.

7. Closing. (a) The consummation of the sale and purchase of the Stations’ Assets pursuant to this Agreement (the “Closing”) shall take place within ten (10) business days after the date of the Grant, unless a petition to deny or objection is filed against the Assignment Application, in which event Buyer may elect to postpone Closing until the Grant becomes Final (defined below). Postponement of the Closing, for any other reason, requires written agreement between the Buyer and Seller.

(b) For purposes of this Agreement, the term “Final” means that action shall have been taken by the FCC (including action duly taken by the FCC’s staff, pursuant to delegated authority) to Grant the Assignment Application which (1) shall not have been reversed, stayed, enjoined, set aside, annulled or suspended; (2) the time has passed in which anyone may file an appeal, request for stay or similar act or similar action to reverse the Grant; and (3) the legally-defined time has passed for FCC action on its own motion to reverse the Grant.

8. Closing Deliveries By Seller: At Closing, Seller shall deliver, or cause to be delivered, to Buyer the following:

- (a) a Bill of Sale vesting in Buyer good and marketable title in and to the Assets, executed by Seller (a “Bill of Sale”);
- (b) an Assignment and Assumption Agreement transferring to Buyer the rights and obligations of Seller pursuant to the FCC Licenses (an “FCC Assignment”), executed by Seller;
- (c) Assignment and Assumption Agreements transferring to Buyer the rights and obligations of Seller pursuant to the Tower Leases (the “Tower Lease Assignments”), executed by Seller;
- (d) all consents required, if any, for assignment of the Tower Leases;
- (g) a closing statement, executed by Seller; and
- (h) such other documents, instruments and agreements necessary to consummate the transactions contemplated by this Agreement, executed by Seller.

9. Closing Deliveries by Buyer. At Closing, Buyer shall deliver, or cause to be delivered, to Seller the following:

- (a) Purchase Price;
- (b) FCC Assignment document, executed by Buyer;
- (c) Tower Lease Assignment1s, executed by Buyer;
- (d) Closing statement, executed by Buyer; and
- (e) Such other documents, instruments and agreements necessary to consummate the transactions contemplated by this Agreement, executed by Buyer.

10. Termination. This Agreement may be terminated prior to Closing as follows:

- (a) by mutual written consent of Buyer and Seller;
- (b) by written notice of Buyer to Seller if Seller does not perform the obligations to be performed by it under this Agreement on or before the Closing Date and such breach or default is not cured within the Cure Period (defined below); provided, however, the Cure Period shall not apply to a default in payment;
- (c) by written notice of Seller to Buyer if Buyer does not perform the obligations to be performed by it under this Agreement on or before the Closing Date, or otherwise breaches in any material respect its representations or warranties or defaults in any material respect in the

performance of its covenants or agreements herein or therein contained and such breach or default is not cured within the Cure Period; or

(d) by either Buyer or Seller, by written notice to the other party, if the Grant is not Final within one year of issuance. However, the right to terminate this Agreement under this Section 9.1(d) shall not be available to any party whose failure to fulfill any obligation under this Agreement shall have been the principal cause of, or shall have resulted in unreasonable delay in the Grant becoming Final or in delaying the Closing required after the Grant becomes Final.

(e) The term "Cure Period" as used herein means a period commencing the date Buyer or Seller receives from the other written notice of breach or default hereunder and continuing until the earlier of (i) fifteen (15) calendar days thereafter or (ii) the Closing Date. Termination of this Agreement shall not relieve any party of any liability for breach or default under this Agreement prior to the date of termination.

11. Further Assurances. After 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 of conveyance and assumption and take such other actions as may reasonably be requested in order to more effectively consummate the transactions in this Agreement.

12. Assignment. Neither party may assign this Agreement without the prior written consent of the other party.

13. Amendments. No amendment or waiver of compliance with any provision hereof or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in writing signed by the party against whom enforcement of such amendment, waiver, or consent is sought.

14. Governing Law and Venue. The construction and performance of this Agreement shall be governed by the laws of the State of Wisconsin without giving effect to the choice of law provisions thereof. Disputes under this Agreement must be adjudicated in a court of competent jurisdiction in the City of Madison, Wisconsin or the county in which Madison is located.

15. Notices. Any notice pursuant to this Agreement shall be in writing and shall be deemed delivered on the date of personal delivery or confirmed facsimile transmission or confirmed delivery by a nationally recognized overnight courier service, and shall be addressed as set forth on *Exhibit A* attached hereto (or to such other address as any party may request by written notice in advance).

16. Expenses. Buyer shall pay all costs related to negotiation, creation, and execution of this Agreement, its prosecution at the FCC, and for Closing.

17. Specific Performance. Given the unique nature of the assets subject to this Agreement, in the event of a breach or threatened breach by Seller of any representation, warranty, covenant or agreement under this Agreement, at Buyer's election, Buyer shall be entitled to an injunction restraining any such breach or threatened breach and to enforcement of this Agreement by a decree of specific performance requiring Seller to fulfill its obligations under this Agreement, in each case

without the necessity of showing economic loss or other actual damage and without any bond or other security being required. If any action is brought by Buyer pursuant to this subsection to enforce this Agreement, Seller shall waive the defense that there is an adequate remedy at law.

18. Liquidated Damages. In the event of a breach by Buyer of this Agreement, or any representation, warranty, or covenant under this Agreement, Seller shall be entitled to liquidated damages, and not as a penalty, an amount equal to the Purchase Price. Seller hereby waives all other legal and equitable remedies it may otherwise have as a result of any breach or default by Buyer under this Agreement.

19. Maintenance of Station in Good Legal Standing: Seller shall maintain compliance with all rules and regulations of the FCC and any other governmental authority whose jurisdiction affects Station operations, whether directly or indirectly, until Closing is complete.

19. Severability. If any court or governmental authority holds any provision in this Agreement invalid, illegal or unenforceable under any applicable law, then, so long as no party is deprived of the benefits of this Agreement in any material respect, this Agreement shall be construed with the invalid, illegal or unenforceable provision deleted and the validity, legality and enforceability of the remaining provisions contained herein shall not be affected or impaired thereby.

20. Entire Agreement. This Agreement (including the Exhibits and Schedules hereto) constitutes the entire agreement and understanding of the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and understandings with respect to the subject matter herein. No party makes any representation or warranty with respect to the transactions contemplated by this Agreement except as expressly set forth herein.

21. Counterparts and Electronic Delivery. This Agreement may be executed in separate counterparts, each of which will be deemed an original and all of which together will constitute one and the same Agreement. The parties may execute this document and deliver its executory signature to the other party in electronic form either as a facsimile transmission or as an email attachment. Such executed counterparts or complete documents shall have full legal force and effect as if they were signed in pen and ink and hand-delivered.

[SIGNATURE PAGE FOLLOWS]

(SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT)

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

SELLER:

The First Unitarian Society of Madison

By: Monica Nolan
Monica K. Nolan, Executive Director

BUYER:

Cow- Power Media Productions Company

By: Mark Shults, Treasurer
Mark Shults, Treasurer

Exhibit A

Notices to Seller:

The First Unitarian Society of Madison
Attn: Executive Director
900 University Bay Drive
Madison WI 53705

Notices to Buyer:

Cow-Power Media Productions Company
Attn: Kelly Warren
1327 E. Wilson Street
Madison, WI 53703

Schedule 1(a)

FCC License(s) for WMUU-LP (Facility ID Number 197230), Madison, Wisconsin

Schedule 1(b)
Tangible Personal Property

1. Antenna (need make and model or serial number)
2. Tower (need identifying information)
3. Transmitter (need make and model or serial number)
4. Emergency alert system
5. Desktop broadcasting computer (need make and model or serial number)

Schedule 1(c)
Tower Leases

Schedule 1(d)
Intellectual Property and Other Intangibles

1. Copyright to the originally designed WMUU cow logo, and any scripts, music or sound recordings exclusively used for the Station.
2. Website domain name, www.wmuuradio.org.
3. All trademarks related to WMUU-LP and WMUU