

PROGRAMMING AGREEMENT

THIS PROGRAMMING AGREEMENT (this “**Agreement**”) is made and entered into as of April 12, 2023 between New Mexico Junior College, a New Mexico public junior college (“**Licensee**”), and Eastern New Mexico University, a New Mexico public university (hereinafter (“**Programmer**”).

Recitals

A. Licensee is the licensee of the broadcast radio station KNMJ(FM), Eunice, New Mexico (Facility ID #40206) (the “**Station**”) pursuant to a license issued by the Federal Communications Commission (“**FCC**”):

B. Programmer is an experienced public radio broadcaster and the licensee of KENW-FM, Portales, New Mexico, and various other radio stations that rebroadcast KENW-FM.

C. Licensee desires to obtain programming for the Station, and Programmer desires to provide programming for broadcast on the Station on the terms set forth in this Agreement.

D. Licensee (as Donor) and Programmer (as Donee) are parties to a Donation Agreement dated as of April 12, 2023 (the “**Donation Agreement**”) with respect to the Station.

Agreement

NOW, THEREFORE, taking the foregoing recitals into account, and in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. Term. The term of this Agreement (the “**Term**”) will begin on April 12, 2023 (the “**Commencement Date**”), and will continue from the Commencement Date until the earlier of: (a) the closing date under the Donation Agreement; and (b) one year from the Commencement Date, unless earlier terminated in accordance with the terms of this Agreement (or extended by mutual written agreement).

2. Programming. During the Term, Licensee shall make available to Programmer all of the airtime on the Station for programming provided by Programmer (the “**Programs**”) for broadcast twenty-four (24) hours per day, seven (7) days per week. During the Term, Programmer will transmit the Programs to the Station’s transmitting facilities and Licensee will broadcast the Programs on the Station, subject to the provisions of Section 5 below.

3. Consideration. As stated in the Recitals, the parties have entered into a Donation Agreement. The parties agree that their respective undertakings which will result in the provision of high-quality public radio programming to the KNMJ service area, including Eunice and Hobbs, New Mexico, and Programmer’s ability to reach listeners in those same areas,

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constitute sufficient consideration for this Agreement. Programmer understands and acknowledges that the Station is currently off the air since July 1, 2022 pursuant to an FCC grant of Silent Special Temporary Authority dated September 8, 2022 (FCC File No. 0000194501) and that the Station must return to licensed broadcast operation no later than July 1, 2023 or the FCC License will permanently expire. Programmer and Licensee agree to work together to ensure that the Station returns to licensed operation no later than July 1, 2023 and that the FCC License does not expire.

4. Control. Notwithstanding anything to the contrary in this Agreement, Licensee shall have full authority, power and control over the operation of the Station, including its programming, at all times during the Term, and shall bear responsibility for the Station's compliance with the rules, regulations and policies of the FCC and all other applicable laws. Without limiting the generality of the foregoing, Licensee will retain control over the policies and operations of the Station. Licensee may reject, refuse, or preempt Programs which Licensee believes to be contrary to the public interest, and may preempt any Program in the event of a local, state, or national emergency.

5. Programs. Licensee acknowledges that it is familiar with the type of programming Programmer intends to provide and has determined that the broadcast of such programming on the Station would serve the public interest. Programmer shall ensure that the contents of the Programs conform to all FCC rules, regulations and policies. All rights in and to the Programs will remain vested in Programmer. Licensee shall air the Programming in its entirety and without any additions, deletions or modifications, subject to **Section 4** above.

6. Expenses. Licensee will pay for maintenance of all studio and transmitter equipment and all other operating costs required to be paid to maintain the Station's broadcast operations in accordance with FCC rules and policies and applicable law, and all utilities supplied to its main studio and transmitter sites. Licensee will provide personnel necessary for the broadcast transmission of the Programs (once received at its transmitter site) and will be responsible for the salaries, taxes, insurance and related costs for all such personnel.

7. Call Letters. During the Term, Licensee will retain all rights to the current call letters of the Station and will ensure that proper station identification announcements are made with such call letters in accordance with FCC rules and regulations. Programmer shall include in the Programs an announcement at the beginning of each hour to identify such call letters, as well as any other legal identification announcements required by the rules and regulations of the FCC. Programmer is authorized to use such call letters in its Programs and in any promotional material in any media used in connection with the Programs.

8. Facilities. During the Term, if requested by Programmer, Licensee shall provide Programmer access to and use of Licensee's transmission facilities for purposes of performing this Agreement. When on Licensee's premises, Programmer shall not act contrary to the terms of any lease for such premises or interfere with the business and operation of Licensee's use of such premises.

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9. Representations. Programmer and Licensee each represent and warrant to the other that: (i) it has the power and authority to enter into this Agreement and to consummate the transactions contemplated hereby; (ii) it is duly organized and validly existing under the laws of the State of New Mexico (iii) it has duly authorized this Agreement, and this Agreement is binding upon it.

10. Donation Agreement. This Agreement shall terminate automatically upon Closing under the Donation Agreement. This Agreement may be terminated by either party by written notice to the other in the event of any expiration or termination of the Donation Agreement.

11. Events of Default; Termination.

(a) The occurrence the following will be deemed an Event of Default by Programmer under this Agreement: (i) Programmer fails to observe or perform any obligation contained in this Agreement in any material respect; or (ii) Programmer breaches any representation or warranty made by it under this Agreement in any material respect.

(b) The occurrence of the following will be deemed an Event of Default by Licensee under this Agreement: (i) Licensee fails to observe or perform any obligation contained in this Agreement in any material respect; or (ii) Licensee breaches any representation or warranty made by it under this Agreement in any material respect.

(c) Notwithstanding the foregoing, an Event of Default will not be deemed to have occurred until fifteen (15) calendar days after the non-defaulting party has provided the defaulting party with written notice specifying the Event of Default and such Event of Default remains uncured, and an opportunity to cure.

12. Assignment. Neither party may assign this Agreement without the prior written consent of the other party hereto which consent cannot be unreasonably withheld.

13. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement. If any provision of this Agreement is determined to be invalid or unenforceable, such provision shall be deemed restated, in accordance with applicable law, to reflect as nearly as possible the original intentions of the parties, and the remainder of the Agreement shall be in full force and effect.

14. Notices. Any notice pursuant to this Agreement shall be in writing and shall be deemed delivered on the date of personal delivery or electronic mail transmission or confirmed delivery by a nationally recognized overnight courier service, or on the third (3rd) day after prepaid mailing by certified U.S. mail, return receipt requested, and shall be addressed as follows (or to such other address as any party may request by written notice):

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if to Licensee, then to:

New Mexico Junior College
1 Thunderbird Circle
Hobbs, NM 88240
Attn: Scotty Holloman, General Counsel
Email: sholloman@nmjc.edu

with a copy (which shall not constitute notice) to:

Lerman Senter PLLC
2001 L Street, N.W., Suite 400
Washington, DC 20036
Attention: F. Scott Pippin
E-mail: spippin@lermansenter.com

if to Programmer, then to:

Eastern New Mexico University
1500 S Avenue K
Portales, New Mexico 88130
Attention: Duane Ryan
E-Mail: duane.ryan@enmu.edu

with a copy (which shall not constitute notice) to:

The Sanchez Law Firm P.C.
1629 K Street N.W., Suite 300
Washington, D.C. 20006
Phone: 202-237-2814
Fax: 202-540-9311
Attention: Ernest Sanchez
E-Mail: ernestsanchez2348@gmail.com

15. Miscellaneous. 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. 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. This Agreement is not intended to be, and shall not be construed as, an agreement to form a partnership, agency relationship, or joint venture between the parties. Neither party shall be authorized to act as an agent of or otherwise to represent the other party. The construction and performance of this Agreement shall be governed by the laws of the State of New Mexico without giving effect to the choice of law provisions thereof. This Agreement (including the Schedule hereto) constitutes the entire agreement and understanding among the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings with respect to the subject matter hereof.

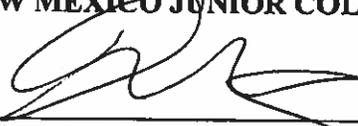
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SIGNATURE PAGE TO PROGRAMMING AGREEMENT

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

LICENSEE:

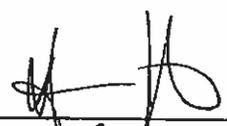
NEW MEXICO JUNIOR COLLEGE

By: 

Dr. Derek Moore, President

PROGRAMMER:

EASTERN NEW MEXICO UNIVERSITY

By: 

Name: Sr James Johnston

Title: Chancellor