

WXTF-LP - EXHIBIT 2
Donation Agreement

EXECUTION VERSION

LOW POWER RADIO STATION DONATION AGREEMENT

This LOW POWER RADIO STATION DONATION AGREEMENT ("Agreement") is made as of December 30, 2020, by and between HARRISVILLE CULTURAL INSTITUTE, a Michigan non-profit corporation ("Donor"), and ALCONA MUSIC PROJECT, INC., a Michigan non-profit corporation ("Donee").

RECITALS

Donor is licensee of Low Power FM Radio Station WXTF-LP, Harrisville, MI (FCC Facility ID No. 193532) which operates on FM Channel 250 (97.9 MHz) with 100 Watts Effective Radiated Power with antenna center of radiation at 29 meters above average terrain (herein "Station") as authorized by the Federal Communications Commission ("FCC");

Donor owns certain assets ("Assets") used or useful in the operation of the Station;

Donor's Assets and studio (Transmitter-Studio Site) are located at a residence loaned by a station volunteer at 878 Harborview Drive, Harrisville, MI 48740.

Donor desires to donate and Donee desires to acquire Station;

Subject to the conditions of this Agreement, Donee desires to accept the Assets and the FCC License (as defined below) from Donor.

THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Defined Terms. Unless otherwise stated in this Agreement, the following terms used herein shall have the following meanings:
 - (a) "Agreement" shall have the meaning set forth in the introductory paragraph.
 - (b) "Assignment Application" shall mean the application that Donor and Donee will join in and file with the FCC requesting its unconditional written consent to the assignment of the FCC License by Donor to Donee.
 - (c) "Closing Date" shall mean the date after the FCC has granted the Assignment Application and the grant has become a Final Order unless the Donee waives this condition.
 - (d) "Closing Place" shall mean the offices of Smithwick & Belendiuk, P.C., 5028 Wisconsin Avenue, NW, Suite 300, Washington, DC, 20016, or such other place as the parties may mutually agree to in writing. Closing may be conducted with electronic transmission and exchange of documents.

- (e) “Donee” shall have the meaning set forth in the introductory paragraph.
- (f) “Donor” shall have the meaning set forth in the introductory paragraph.
- (g) “Effective Date” means the date on which this Agreement is executed by both parties.
- (h) “FCC” shall mean the Federal Communications Commission, as set forth in the Recitals.
- (i) “FCC License” shall mean the licenses issued by the FCC and listed on Schedule 2(d) hereto, issued to or held by Donor, which authorize the operation of the Station, the license of which will not expire prior to October 1, 2028, together with any additional such licenses issued by the FCC to Donor with respect to the Station on or before the Closing Date.
- (j) “Final Order” shall mean an order of the FCC granting its consent and approval of an application, and with respect to which no appeal, no petition for re-hearing, reconsideration or stay, and no other administrative or judicial action contesting such consent or approval is pending, and as to which the time for filing any such appeal, petition or other action has expired, or if filed, has been denied, dismissed or withdrawn, and the time for instituting any further legal proceeding has expired.
- (k) “Station” shall mean Low Power FM Station WXTF-LP, Harrisville, Michigan, as an operating organization.

2. Assets to be Conveyed. On the Closing Date, subject to the terms of this Agreement and contingent upon the satisfaction of all of the conditions contained herein, Donor shall, for no monetary consideration, donate, transfer, assign and deliver to Donee, and Donee shall assume and accept from Donor, all of the following assets (the “Assets”):

- (a) The tangible personal property set forth on Schedule 2(a) that is used or useful in the operation of the Station in the ordinary course of business and is not an Excluded Asset as defined in Section 3 of this Agreement (collectively, the “Transferred Assets”);
- (b) All of Donor’s right, title and interest in and to the use of the call letters “WXTF-LP” and any and all copyrights, trademarks and trade names, promotional materials, logos, TV commercials and related materials used or useful in the operation of the Station (collectively, the “Intellectual Property”);
- (c) The FCC License as listed on Schedule 2(c), subject to the approval of the FCC as hereinafter provided;
- (d) All of Donor’s right, title and interest in the use of the Transmitter-Studio Site.

- (e) All business, engineering and governmental records relating to the operation of the Station, but excluding tax returns, minute books and other such records relating to Donor's corporate affairs.
- 3. Excluded Assets. Notwithstanding the foregoing Section 2, the Assets shall not include any Accounts Receivable, Notes Receivable, cash or cash equivalents, including, without limitation, any marketable securities or money market instruments, savings deposits or unprocessed checks (collectively, the "Excluded Assets").
- 4. Donor's Representations and Warranties. Donor makes the following representations and warranties to Donee, each of which shall be deemed a separate covenant:
 - (a) Organization. Donor is now, and as of the Closing Date will be, a non-profit corporation, duly organized, validly existing and in good standing under the laws of the State of Michigan. As of the Closing Date, Donor will be qualified to do business under the laws of the State of Michigan, and to operate the Station under the laws of Michigan and under the rules and regulations of the FCC.
 - (b) Post-Closing Charges. Donor will be solely responsible for, and shall either pay or make other provision satisfactory to Donee for, all debts, taxes and other obligations of any kind whatsoever imposed or arising by reason of Donor's operation of the Station after the Closing Date, and Donor shall indemnify and hold Donor harmless from any and all such debts, taxes and obligations.
- 5. Donee's Representations and Warranties. Donee makes the following representations and warranties to Donor, each of which shall be deemed a separate covenant:
 - (a) Organization. Donee is now, and as of the Closing Date will be, a non-profit corporation, duly organized, validly existing and in good standing under the laws of the State of Michigan. As of the Closing Date, Donee will be qualified to do business under the laws of the State of Michigan, and to operate the Station under the laws of Michigan and under the rules and regulations of the FCC.
 - (b) Post-Closing Charges. Donee will be solely responsible for, and shall either pay or make other provision satisfactory to Donor for, all debts, taxes and other obligations of any kind whatsoever imposed or arising by reason of Donee's operation of the Station after the Closing Date, and Donee shall indemnify and hold Donor harmless from any and all such debts, taxes and obligations.
 - (c) Donee understands and expressly agrees that Donor will convey to Donee the Assets "as-is"/"where-is" without any warranties of fitness for any purpose.
- 6. Survival of Representations and Warranties. The warranties and representations contained in this Agreement shall be deemed to be material and relied upon by the party

to which they are made, and, unless otherwise specified, shall survive the execution, delivery and performance of this Agreement, and the consummation of the transactions contemplated herein, for a period of six (6) months after such consummation, or until the final settlement or adjudication of any alleged breach of this Agreement for which written notification is given within the same six (6) month period.

7. Conditions to Donor's Obligations. The obligation of Donor to consummate the transactions contemplated herein shall be subject to the satisfaction, in the sole discretion of Donor, to each of the following conditions (Donor, in its sole discretion, may elect to waive the conditions requiring a Final Order):
 - (a) The FCC shall have granted the Assignment Application (as defined in Section 12 hereof) and the grant shall have become a Final Order;
 - (b) Donee shall have executed, performed and complied, in all material respects, with all obligations and conditions required by this Agreement to be executed, performed or complied with by Donee prior to, or as of, the Closing Date, and shall have delivered to Donor a certificate to that effect, dated as of the Closing Date and signed by an officer of Donee;
 - (c) There shall be no ongoing or pending litigation or proceeding to restrain or prevent the performances of Donor or Donee as required by this Agreement, or to invalidate the transactions contemplated herein; and
 - (d) The representations and warranties of Donee shall be true and correct in all material respects at and as of the Closing Date as though such representations and warranties had been made at and as of the Closing Date, and Donor shall have received a certificate to that effect, dated as of the Closing Date and signed by an officer of Donee.
8. Conditions to Donee's Obligations. The obligation of Donee to consummate the transactions contemplated herein shall be subject to the satisfaction, in the sole discretion of Donee, of the following conditions:
 - (a) Donor shall have delivered, or caused to be delivered, all of the documents described in Section 15 of this Agreement, including, without limitation, the instruments of conveyance and transfer for the Assets and assignment of the FCC License;
 - (b) The FCC shall have granted its consent and approval to all of the FCC Applications, and the same shall have become Final Orders, unless Donee waives this condition;
 - (c) Donor shall have executed, performed and complied, in all material respects, with all obligations and conditions required by this Agreement to be executed, performed or complied with by Donor prior to, or as of, the Closing Date;

- (d) There shall be no ongoing or pending litigation or proceeding to restrain or prevent the performances of Donor or Donee as required by this Agreement, or to invalidate the transactions contemplated herein; and
9. Due Diligence. Donor will use its commercially reasonable efforts to provide Donee, including its representatives, agents, experts, counsel and accountants, with reasonable access to the equipment and property of the Station.
10. Confidentiality. Neither Donee nor Donor, nor their respective officers, agents or other representatives, will make any public disclosures regarding the transactions contemplated in this Agreement, except as may be required by law or court order or with the advance written consent of the other party. All information obtained by Donee related to the Station and Donor shall be kept strictly confidential by Donee, including its officers, agents and other representatives, and shall be accorded the same treatment given to Donee's own information of like importance; provided, however, that in no event will Donee take less than reasonable precautions to protect the confidentiality of such information. Notwithstanding the foregoing, Donee may disclose such of the information as may be reasonably necessary to its officers, agents or other representatives; provided, however that Donee shall require all such persons to hold the information in the same confidence as is required of Donee, and Donee hereby acknowledges and agrees that it will be held responsible for any failure of such parties to do so. The covenants of the parties under this Section 10 shall survive the Closing Date. If this Agreement is terminated without the consummation of the transactions contemplated herein, Donee shall promptly return to Donor any and all documents, materials and confidential information provided by Donor to Donee pursuant to the Agreement.
11. Indemnification.
- (a) Donor hereby agrees to indemnify and hold harmless Donee from and against any and all claims, costs, losses, damages, expenses and liabilities of any kind (each a "Claim") arising on or before the Closing Date from or relating to liabilities (i) of the Station; (ii) arising under facts or circumstances occurring on or before the Closing Date with respect to the ownership or operation of the Station; or (iii) resulting from any breach of Donor's representations and warranties as set forth in Section 4 of this Agreement or any breach of Donor's confidentiality obligations as set forth in Section 10 of this Agreement.
- (b) Donee hereby agrees to indemnify and hold harmless Donor from and against any Claim arising after the Closing Date from or relating to liabilities (i) of the Station, to the extent assumed by Donee under this Agreement; (ii) arising under facts or circumstances occurring after the Closing Date with respect to the ownership or operation of the Station; or (iii) resulting from any breach of Donee's representations and warranties as set forth in Section 5 of this Agreement

or any breach of Donee's confidentiality obligations as set forth in Section 10 of this Agreement.

- (c) In the event that any Claim is asserted against Donor or Donee by a third party, which Claim, if established, would require indemnification under this Section 11, then the party against whom the Claim is asserted ("Claim Defendant") shall promptly give written notice of the Claim ("Claim Notice") to the other party. Within ten (10) days of receiving the Claim Notice, Claim Defendant shall notify the other party whether or not it will defend against the asserted Claim. If Claim Defendant elects not to defend against the Claim, or fails to notify the other party of its intent within ten (10) days of receiving the Claim Notice, then the other party may elect to defend against the Claim and, if it so elects, the other party shall be entitled to recover its reasonable attorney's fees in accordance with the provisions of this Section 11. Each of the parties agrees to provide such reasonable assistance as may be requested by the other party in defending against the Claim, including providing reasonable access to any records and information necessary or useful for such defense.

12. Application for FCC Approval.

- (a) Donor and Donee shall each use their best efforts and shall diligently cooperate to take all steps necessary to prepare, or cause the preparation of, the Assignment Application, complete in all material respects, and the filing of the same with the FCC within 5 business days following the Effective Date. After the filing of the Assignment Application, Donor and Donee will take all steps reasonably necessary to expedite its prosecution to a favorable decision, including the timely filing of any amendments and/or the provision of any other information reasonably requested by the FCC; provided, however, that neither party will seek to voluntarily amend the Assignment Application without the prior written consent of the other party unless such amendment is requested by the FCC or otherwise required by FCC rules or regulations. In the event either party files any such amendments or provides any such information, whether or not requested by the FCC, it will promptly notify the other party of the action taken. After the Assignment Application is granted, the parties shall, from time to time, file with the FCC such requests as may be necessary to extend FCC consummation authority under the grant of the Assignment Application.
- (b) Each party to the Assignment Application will bear its own expenses in connection with the preparation of the applicable portions of the Assignment Application, and of the prosecution of same. Donor will timely make the broadcast notice and post a link on its website with respect to the Assignment Application, as required by FCC rules and regulations pursuant to 47 C.F.R. § 73.3580.

13. Termination.

- (a) This Agreement may be terminated as follows at any time on or prior to the Closing date:
 - (i) by written agreement of the Donee and Donor; or
 - (ii) by either of Donor or Donee at any time following the denial of the FCC Application by the FCC, or the rescission or revocation of its consent to any of the FCC Application.
- (b) This Agreement may be terminated as follows by Donor:
 - (i) at any time on or prior to the Closing Date, if Donee shall materially breach any representation, warranty or agreement contained herein and shall fail to remedy that breach within thirty (30) days after receiving written notice of the breach; or
 - (ii) at any time after the Closing Date, if Donee shall fail to consummate the transactions contemplated hereby; provided, however, that Donor is not then in material breach of any agreement contained herein;
- (c) This Agreement may be terminated as follows by Donee:
 - (i) at any time on or prior to the Closing Date, if Donor shall materially breach any representation, warranty or agreement contained herein and shall fail to remedy that breach within thirty (30) days after receiving written notice of the breach; or
 - (ii) at any time after the Closing Date, if Donor shall fail to consummate the transactions contemplated hereby; provided, however, that Donee is not then in material breach of any representation, warranty, or agreement contained herein.
- (d) Notwithstanding any provision in this Agreement to the contrary, the obligations of Donor and Donee to consummate the transactions contemplated hereby shall terminate in the event the FCC has not approved any of the FCC Applications on or prior to one year following the date of acceptance for filing of that FCC Application ("Acceptance Date"), or if such approval has not become a Final Order within one year following the Acceptance Date.

14. Brokers. Each of Donor and Donee warrants that it has not incurred or become liable for any broker's commission or finder's fee relating to the transactions contemplated under this Agreement. Each of Donor and Donee agrees to indemnify and hold the other harmless from any claims or causes of action for broker's or finders' fees.

15. Instruments of Conveyance; Transfer and Execution.

- (a) At the Closing Place on the Closing Date, Donor shall deliver to Donee the following:
 - (i) executed copies of such bills of sale and other instruments of assignment and conveyance as are necessary to convey and transfer the Assets to Donee;
 - (ii) an executed assignment of the FCC License; and
 - (iii) an executed assignment of Donor's right to use the Transmitter-Studio Site.
- (b) At the Closing Place on the Closing Date, Donee shall deliver to Donor the certificate described in Section 7 of this Agreement.

16. Preservation and Access of Books and Records. Donor and Donee shall each permit the other party to have reasonable access to its books and records relating to the Station until the later of (i) three (3) years following the Closing Date, or (ii) the date on which all income tax liabilities of Donor, or any principal thereof, relating to the Station shall have been settled. Access pursuant to this Section 16 shall be permitted only to the extent necessary for the parties to satisfy their respective tax, accounting and bookkeeping procedures and the associated filing requirements, or for such other purposes as to which such access is reasonably necessary and proper.

17. Assignment. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, executors, administrators, successors and assigns. Notwithstanding the foregoing, this Agreement may not be assigned by either party without the prior written consent of the other party.

18. Notices. All notices, demands and requests required or permitted by this Agreement shall be deemed duly given if sent via:

- (a) registered U.S. Mail, postage prepaid, return receipt requested; or
- (b) a nationally recognized overnight courier service

and addressed as follows:

If to Donor:

Harrisville Cultural Institute
P. O. Box 303
Harrisville, MI 48740
Attention: Roger L. Lemons, President

Email: rogerlemons1@gmail.com

If to Donee: Alcona Music Project, Inc.
P. O. Box 142
Harrisville, MI 48740
Attention: Douglas Cheek, President
Email: dmcheek52@gmail.com

19. Miscellaneous.

- (a) Entire Agreement; Waiver. This Agreement contains the entire agreement of the parties with respect to the transactions contemplated herein, and supersedes all prior negotiations between the parties concerning the subject matter contained herein. No change, modification or waiver of any provision hereof shall be valid unless in writing and signed by the each of the parties. No delay or failure on the part of either party in exercising its rights hereunder, and no partial or single exercise thereof, shall constitute a waiver of such rights or of any other rights hereunder.
- (b) Third Parties. Nothing in this Agreement shall be construed as giving to any person, firm, corporation or other entity other than the parties hereto, their respective heirs, executors, administrators, successors and assigns, any right, remedy or claim under or in respect of this Agreement or any provision hereof.
- (c) Governing Law; Jurisdiction; Venue. This Agreement shall be construed and interpreted in accordance with the laws of Michigan, without regard for conflicts of law principles that might require the application of any other law. Each of the parties hereby submits to the exclusive jurisdiction of the courts of the State of Michigan and the United States District Court for the Eastern District of Michigan in respect of any action arising out of this Agreement.
- (d) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.
- (e) Construction. Captions, titles and headings used in this Agreement are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The parties acknowledge that they have been represented by, or have had the opportunity to consult with, competent counsel of their choice in the negotiation of this Agreement, and that, accordingly, no provision of this Agreement will be construed against any party regardless of which party was responsible for the drafting thereof.

- (f) Severability. If any provision of this Agreement shall be found invalid, illegal or unenforceable by a court or arbitral body of competent jurisdiction, such provision shall be deemed null and void, but the remainder of this Agreement shall remain in full force and effect between the parties so long as the invalidation of that provision does not frustrate the fundamental business purpose of the Agreement.
- (g) Remedies. The parties agree that if either party refuses to consummate the transactions contemplated hereunder, the other party may seek specific performance of this Agreement, as well as any other remedies available at law or in equity; provided, however, that the party seeking such remedy is not in default hereunder.
- (h) Risk of Loss. The risk of loss, damage or destruction of the property to be transferred to Donee hereunder due to fire or other casualty shall be borne by Donor at all times until consummation of the transactions contemplated by this Agreement. Should any such loss, damage or destruction occur prior to the Closing Date, Donor shall immediately notify Donee in writing, specifying with particularity the loss or damage incurred, the cause thereof (if known or reasonably ascertainable) and the details of any relevant insurance coverage.

In the event of such loss, damage or destruction, Donor shall, at Donee's option, either:

- (i) promptly repair, replace or restore the property or assets to their previous condition, at Donor's sole cost and expense; or
- (ii) assign to Donee all proceeds of any insurance proceeds which Donor has received or to which Donor would be entitled as a result of such loss, damage or destruction, in which case Donee shall be responsible for the repair, replacement or restoration of the property or assets.

In the event that Donee elects for Donor to repair, replace or restore the property or assets as set forth in clause (i), above, and such property or assets are not completely repaired, replaced or restored on or before the Closing Date, Donee may, at its sole option, elect to do either of the following:

- (i) postpone the consummation of the transactions until such time as the property or assets have been completely repaired, replaced or restored to the reasonable satisfaction of Donee. In such case, if necessary, Donor shall join with Donee in requesting from the FCC any extensions of time as may be required to allow such repairs to be completed prior to the consummation of the transfer; or


- (ii) consummate the transactions and accept the property and assets in their then-existing condition. In such case, Donor shall assign to Donee all proceeds of insurance which Donor has received or would be entitled to receive as a result of the loss, damage or destruction, together with any additional amounts necessary to repair, replace or restore the property.

[SIGNATURE PAGE FOLLOWS]

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

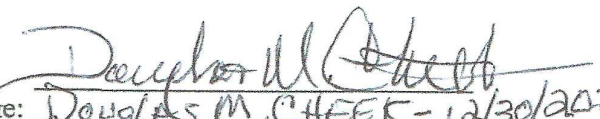
DONOR

HARRISVILLE CULTURAL INSTITUTE

By: 
Name: Roger Lemon
Title: President

DONEE

ALCONA MUSIC PROJECT, INC.

By: 
Name: DOUGLAS M. CHEEK - 12/30/2020
Title: PRESIDENT-ALCONA MUSIC PROJECT

Schedule 2(a)

Transferred Assets

Denon DN-04500 (dual CD deck)
Denon DN-04500 Mk II (CD deck)
Numark M4 (Submixer)
Tascam S0-20M (SD Recorder)
Gemini PS 626x
dbx compgate 266A (Dynamics processor)
Extron Video/Audio Switcher
RAM PS-1000 oscilloscope
Tascam CD-RW 901
Microboards CD duplicator
SAGE Digital Endec
MXLV250 (microphone)
Audix F9C 296 (microphone)
Sony TC-WE475 cassette deck
Mackie Micro Series 1402 VLZ
2x Infinity Primus 150 monitors
SM Pro Audio Q-Amp
TEAC CD-RW 800 recorder
Dayton Industrial FM Monitor
Dayton Industrial AFC3 receivers
NAD Monitor Series 7100 Stereo receiver
Numark TTX turntable
Numark iDJ2
Optimus SSM-1259 Stereo Mixer
Audio-Technica M4000S mic sum of mid-range estimates
Faraday cage
Optimod
Amplifier

Schedule 2(c)

FCC Licenses

License for WXTF-LP, Harrisville, MI (File No. BLL-20140519AAH) expires 10/1/2028
(See Renewal Application File No. 0000114141).