

AGREEMENT FOR COOPERATION, AFFILIATION, AND MUTUAL SUPPORT

This **AGREEMENT FOR COOPERATION, AFFILIATION, AND MUTUAL SUPPORT** ("Agreement") is entered into as of this 12th day of June, 2014, by and between the **UNIVERSITY OF WASHINGTON**, an institution of higher education and an agency of the State of Washington ("the University") and **FRIENDS OF KEXP**, a Washington not-for-profit corporation ("Friends"). The University and Friends are collectively referred to below as the "Parties." This Agreement replaces and supersedes the Agreement For Radio Station Management, dated June 1, 2011, between the Parties ("Management Agreement").

RECITALS

1. The University is an institution of higher education established pursuant to the laws of the State of Washington. The University is engaged in comprehensive academic, research, and healthcare programs. Its mission includes the creation, preservation, and dissemination of knowledge and furtherance of the arts.
2. Friends is an independent tax exempt public charity, organized as a Washington nonprofit corporation with a mission to enrich people's lives by championing music and discovery, including operating the non-commercial educational radio station KEXP FM (the "Station"), an important community asset.
3. For many years, the University has been the Federal Communications Commission ("FCC") licensee of the Station. Since 2001, Friends has managed the Station for the University, pursuant to the Management Agreement that complies with FCC requirements. Apart from the management of the Station itself, the Parties have developed a deep and broad affiliation that serves their mutual interests and common missions.
4. Over the period of Friends' management of the Station, Friends' vision for the Station's future has matured and grown in sophistication. Friends has secured a lease for a permanent home for the Station at the Seattle Center. Friends has gained the wherewithal and the technical and financial tools to become the FCC licensee and steward of the Station.
5. Based on these premises, the Parties have developed a new model for their working relationship, under which Friends becomes the named holder of the FCC license for the Station pursuant to an FCC-approved assignment of the license to Friends. This model preserves the mutual benefits of the longstanding affiliation, while simultaneously creating new opportunities for the Station to grow its public service. This model also relieves the University of its responsibility as the FCC licensee for the Station as well as most of its obligation to provide financial and technical support.
6. The purpose of this Agreement is to implement the new model for the relationship between the Parties, reaffirming their long history of cooperative and collaborative efforts and defining the exchange of assets and services between the Parties and their respective roles, rights and obligations.

AGREEMENT

The University and Friends agree to the terms below.

1. Overview of University Obligations

In consideration for the goods, services, and other items of value provided by Friends to the University, the University shall provide certain goods and services to Friends, as more fully described in this Agreement. These include:

- The privileges of an affiliate organization, as agreed to by the Parties;
- Specific fundraising and engineering support;
- Certain limited technical services; and
- Ownership of and rights to certain assets useful to the Station.

2. Overview of Friends' Obligations

In consideration for the goods, services, and other items of value provided by the University to Friends, Friends shall provide certain goods and services to the University, as more fully described in this Agreement. These include:

- Worldwide and regional promotion of the University and its programs;
- Collaborative program opportunities;
- Certain financial payments described below; and
- Board representation.

3. Affiliate Status

The University agrees to treat Friends as an affiliate organization, comparable to the UW Alumni Association or Puget Sound Public Radio, providing benefits and services generally available to an affiliated organization. In addition to the other consideration provided hereunder, the University will provide processing of gifts, University Net IDs for KEXP employees and interns, and, to the extent possible, participation in the U-PASS program or, if not possible, a functional equivalent.

4. Fundraising and Engineering Support

- a. **Fundraising.** From July 1, 2014 through June 30, 2020, the University will provide Friends with fundraising support by funding 100 percent of the salary and benefits of a KEXP-UW Director of Development and 75 percent of the salary and benefits of a KEXP-UW Director of Leadership Giving. Friends will be responsible for the remaining 25 percent of the salary and benefits of the Director of Leadership Giving. The University will continue to process gifts for Friends.

- b. Broadcast Engineer. The University will support the cost of a Broadcast Engineer, whether employed by the University or Friends or as an outside consultant, up to the following amounts:

- For the year beginning July 1, 2014: \$150,000
- For the year beginning July 1, 2015: \$125,000
- For the year beginning July 1, 2016: \$100,000
- For the year beginning July 1, 2017: \$75,000

Such support will end on June 30, 2018.

5. Technical Services

- a. The University will provide following technical services at existing service levels through June 30, 2014:

- Webcasting of live audio streaming service for KEXP
- Legacy Spooling Archive storage

- b. The University will provide the following technical services through December, 31 2014:

- iSCSI Data Storage associated with Phil2.cac.washington.edu @ 5TB

- c. The University will provide following technical services at existing service levels through June 2015:

- Managed Server Hosting and System & Database Administration

~ 8 - KEXP Servers @ UW-IT	
kexp-admin1	kexp-bs-1
kexp-scribe	kexp-sql1
kexp-web1	kexp-web2
kexp-web3	phil2 (past end-of-life)

Note: Friends is responsible for equipment replacement and warranty extension. Servers at end-of-life not covered by manufacturer's warranty receive best-effort, business hour support only.

- d. The University will provide and maintain the Broadcast Tower Lease with KCTS through current term expiring on March 31, 2015.

Note: UW-IT will work coordinate with Friends and KCTS for transition/renewal of lease.

- e. The University will provide the following Broadcast Transmission and Technical Support through June 30, 2015:

- Backup for Broadcast Engineer: Vacation and out of office backup for the Broadcast Engineer, which includes monitoring and emergency support when the KEXP Chief Engineer is out of the office. In return the KEXP Chief Engineer will participate in the UW Video engineering on-call rotation throughout the term of this agreement.
- Maintenance of Transmitter: Participate in the performance of periodic maintenance checks as specified by the FCC and ABIP. KEXP Chief Engineer will conduct each monthly maintenance check and the UW Chief Engineer

and KEXP Chief Engineer will jointly conduct quarterly maintenance checks. Any repairs revealed by the maintenance checks would be the responsibility of Friends

Note: Friends responsible for equipment replacement

f. The University will provide the following technical services through June 30, 2015:

- Archive Storage & Backup (TSM)
 - a) TSM @ 40 TB
 - b) Does not include use of “lolo” archive services

If Friends chooses to continue to use any of the University services described in paragraphs a. through f. beyond their respective termination dates, upon agreement of the Parties, the University will make these services available to Friends, subject to the same standard rate schedule and terms and to the same extent they are made available to internal UW units.

g. The University will also provide Friends the following services at existing service levels at no charge:

- Network & Fiber Transport Services
 - a) 3 Fiber Circuits maintaining connectivity between UW, KEXP (Dexter or Seattle Center), and the Broadcast Tower

Note: Friends is responsible for costs related to relocation to Seattle Center

- Internet Usage (Commodity Internet)
 - a) Including infrastructure in the data center to support utilization of commodity internet.

Note: Friends will be responsible for costs should increase in usage result in incremental costs to UW.

The type and level and cost of these services will be subject to renegotiation every five years.

6. Promotion

Friends will work with the University to expand and enhance the University’s visibility and to increase awareness of and support for the University. The terms and conditions of such work will be mutually negotiated from time to time, provided that the rate charged for all underwriting announcements and online advertising sold by Friends to the University will be the net KEXP flat rate less a 15% discount.

7. Collaborative Programs

Friends and the University will seek to implement shared recognition programs as opportunities arise, such as:

a. Opportunities for Friends and the University to jointly produce live-broadcasts pursuant to cost-sharing arrangements, all as mutually agreed to by the Parties.

b. Opportunities for University to sponsor Friends public music events and for Friends to sponsor University events. Selection to be determined by mutual agreement between the Parties

and will include activities such as signage, promotion, and on site presence as appropriate to the event.

c. An internship program for University students in music programming, audio and video creation, development, online/computing, marketing, or other programs where Friends and University desire to collaborate.

d. Opportunities to jointly develop original content (e.g., mutual sharing of talent resources and content). Explore joint fundraising/underwriting/revenue generating activities in support of collaborative programming opportunities.

e. Opportunities for research and development of online technology focused on deeper and expanded listener and user experiences.

The Parties shall work together collaboratively and jointly, with each party contributing funds, services, and other important assets to assure it effectively serves their mutual interests. The specific terms and conditions of such collaborations will be mutually negotiated from time to time.

8. Trademarks & Other Intellectual Property

a. As of the effective date, the University hereby transfers and conveys to Friends all of the University's rights, title and interests in and to the mark "KEXP," including associated goodwill, and all of the University's rights to use such mark in connection with the operation and promotion of the Station or otherwise.

b. If Friends wishes to use any other University-owned trademark, the Parties agree to follow the procedures defined in this section 8.c. and any applicable University policies and procedures.

c. Friends acknowledges the University's interest in protecting its valuable intangible property rights, and agrees that all non-standard uses and uses of any additional marks must be approved by the University's Trademarks and Licensing Office (the "TLO"), such approval not to be unreasonably withheld. If the TLO grants approval, it may do so on such terms as it deems suitable, such as on either a case-by-case basis or a blanket approval for ongoing use in a particular situation.

d. For any non-standard use or use of an additional mark, Friends shall submit its request in writing to the TLO at least thirty (30) days in advance of the anticipated use. Such request shall describe the context of such use. The TLO shall make reasonable efforts to respond to the request within fifteen (15) days. If the TLO does not inform Friends that permission is granted, it will be presumed that permission has been denied.

e. Friends may not assign or sublicense usage rights for any University trademark or intellectual property, or otherwise grant permission with respect to any University trademark, to any other internal or external entity for commercial use by the assignee or sublicensee, without prior review and approval by the University Trademarks and Licensing Office.

f. When University trademarks are used on merchandise the following rules will apply:

- The manufacturer of the all product must have a license with the University for the use of University trademarks.

- Items produced for internal consumption and at no cost shall not be subject to royalties.
- Promotional items used for resale, promotional giveaway or fundraising incentive shall be subject to royalties on a case-by-case basis.
- Items co-branded with a sponsor and distributed at University events will be subject to promotional licensing royalties on a case-by-case basis.

g. The Parties acknowledge and agree that all donor databases and other information relating to Friends' donors ("Donor Information") is and shall remain the joint property of Friends and the University. As affiliates, each Party agrees that it will share Donor Information with third parties only to the extent permissible under federal law, FCC regulations, and CPB requirements.

9. Other Station-Related Assets

a. Domain Names. The Parties agree that the "kexp.org" internet domain name is owned by Friends. At the request of Friends, the University will assign to Friends all KEXP-related domain names (e.g., kexp.com) that the University may own from time to time. The University will not acquire any KEXP-related domain name without the prior written consent of Friends.

b. Music. The Parties agree that Friends (a) will own (i) any of the recorded music in the Station's collection (including, but not limited to, any recorded music located on the Station premises) to which the University presently has unencumbered ownership rights, (ii) all content created, used, recorded, streamed or stored during broadcasts or otherwise at the Station to which the University presently has unencumbered ownership rights, and (iii) any other tangible or intangible property associated with the Station or necessary for the operation or management of the Station and presently in use for those purposes, and (b) will be entitled to readily access, use, broadcast and otherwise transmit in any media any of the recorded music by the Station in the University's collection to which the University has the necessary rights, wherever stored. Additions to the recorded music collection of the Station after the effective date of this Agreement will become the property of Friends. The University will promptly execute such conveyance instruments to evidence such ownership as Friends may reasonably request, subject to appropriate qualifications about the University's ownership. Friends will have responsibility for obtaining all necessary intellectual property rights for its access, use and broadcast or other transmission of the recorded music for which the University does not have the required rights and will bear all costs associated with obtaining such rights. To the extent Friends has the right to grant such license, the University will have an irrevocable, unrestricted, worldwide, royalty free perpetual license to use any Station music or content created under any collaboration pursuant to this Agreement.

c. Access to Broadcast Tower at 18th and Madison. Subject to the terms of the existing broadcast tower lease, the University will grant Friends the right to use the Broadcast Tower as currently being used by the Station until such time as the current term of the lease expires. The University will take reasonable steps to assist Friends in acquiring its own lease or sublease for the broadcast tower and any related rights and property at the transmitter site, provided, however, that the University will not be required to make payments or provide other consideration to the tower owner to secure such lease for Friends.

d. The University agrees to convey to Friends, at no charge, the University's prefabricated building located at the transmitter site, including all furniture, fixtures, equipment, personal property and associated building systems (e.g., electrical infrastructure, HVAC, environmental sensors, and RF shielding equipment) located therein. Friends agrees to contract with the University to have UW Video maintain the Station's transmitter and associated building systems for a period of five years commencing at Closing. During that time, the University agrees to maintain the building in good condition for Friends' sole use, providing reasonable security, insuring the building, paying all associated costs, utilities, fees, performing scheduled maintenance, and restricting access and use of the building so as to avoid any interference with Friends' exclusive use. Friends agrees to pay the University \$1000 per month for five years for this service, commencing at Closing. After the five year period the Parties may negotiate a continuation of this service relationship or Friends may contract with another party for this service.

10. Financial Payments

To resolve certain issues regarding funds advanced by the University in 2007 support of Friends, Friends will repay the funds through the following annual payments to the University.

- a. \$25,000 on July 1, 2015
- b. \$25,000 on July 1, 2016
- c. \$50,000 on July 1, 2017
- d. \$50,000 on July 1, 2018
- e. \$50,000 on July 1, 2019
- f. \$50,000 on July 1, 2020

The University may require this repayment obligation to be evidenced by a separate promissory note from Friends. Provided these payments are timely, the University will waive any claim to interest in connection with this repayment obligation.

11. Board Representation and Bylaws

Friends will give the University the right to appoint, and remove at will, one member to the Friends Board of Directors. In recognition of Friends' development strategy with respect to its Board of Directors, the University will solicit from Friends a University-affiliated candidate for appointment to the Friends Board of Directors. If the University finds that candidate acceptable, he or she will be appointed to the Friends Board; if not, Friends shall submit another candidate. This process will continue until a mutually acceptable candidate is identified. Upon resignation or removal of any University-appointed Director, this process shall be repeated.

The University and Friends will also cooperate to amend the Friends Articles of Incorporation and Bylaws as needed to reflect this process and to more closely align with their new relationship.

12. FCC License Assignment

The Parties agree that the transfer of the FCC license for KEXP-FM is a material element of the transactions contemplated by this agreement. To that end, the Parties hereby agree to

execute and deliver the Assignment Agreement attached hereto as Exhibit A, pursuant to which the University will assign the license to Friends. This Agreement shall become effective upon "Closing," as defined in the Assignment Agreement. Until then, the Management Agreement shall remain in full force and effect, and the mutual obligations of the Parties in effect from 2011-2014 shall continue.

13. Official Representatives

All official notices or communications to the University pursuant to this Agreement shall be submitted to the following addresses or to such other address as the Parties may provide in writing:

Vice-President for External Relations
University of Washington
214 Gerberding Hall, Box 351210
Seattle, Washington 98195-9508

All official notices or communications to Friends pursuant to this Agreement shall be submitted to the Executive Director of Friends.

Executive Director
Friends of KEXP
113 Dexter Ave N
Seattle, WA 98109

14. Dispute Resolution

If for any reason, Friends and the University fail to agree to a joint resolution of a dispute, the Parties shall engage in the following dispute resolution procedures.

a. Informal Discussion. A representative from both Friends and the University will discuss resolution of the matter informally and attempt to resolve the disagreement.

b. Mediation. If informal discussions have occurred and the matter is not resolved, either one of the Parties may cause the matter to be subject to a formal mediation process by delivery of written notice of mediation on the other Party. Once notice has been delivered, mediation shall occur within 60 days. The Executive Director of Friends or other representative of Friends, appointed by its Board of Trustees, and a representative from the University, appointed by the President of the University, shall jointly appoint a mutually-agreeable and qualified mediator. The representative from each Party shall have authority to settle the matter of behalf of such Party through the mediation process. Each Party shall engage in the mediation in good faith and make every attempt to resolve the matter at this stage. The costs of mediation, including the cost of the mediator, shall be equally borne by the Parties. Each Party shall bear its own costs and expenses, including legal fees, in connection with the mediation.

c. Arbitration. If the matter is not settled through mediation, the Parties shall submit their dispute, through written statements, to a mutually-agreeable arbitrator for final resolution by delivery of written notice of arbitration on the other Party within 30 days after the

conclusion of the mediation. No arbitration arising out of or relating to this Agreement shall include, by consolidation or joinder in any other manner, an additional person not a Party hereto, except by written consent signed by the Parties and any other person sought to be joined. The arbitration shall be final and binding (without appeal or review) in Seattle, Washington. Any arbitration shall be conducted in Seattle in accordance with the AAA rules in effect as of the date of this Agreement. Except to the extent modified herein, the award rendered by the arbitrator(s) shall be final and binding, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. The arbitration process will be subject to expedited arbitration rendered within five business days of receipt of written notice of arbitration. Such arbitration will consider the disputed terms. Within five business days of receipt of notice, the Parties shall submit their positions concerning the dispute to the arbitrator. At the request of the arbitrator or of a Party, the arbitrator will schedule a conference call of no more than one hour with the Parties prior to issuing a decision. The arbitrator's fees shall be paid one-half by the University and one-half by Friends. Each Party shall bear its own costs and expenses, including legal fees and witness expenses, in connection with the arbitration proceeding.

15. Indemnification

a. Friends' Indemnification. Friends agrees to defend, indemnify and hold the University and its employees, Regents, officers, students and affiliates harmless from and against all third-party claims, suits, damages and liabilities, as well as costs and expenses incurred by the University connected therewith, including reasonable attorneys' fees, arising from (a) Friends' performance or non-performance of its obligations, covenants or agreements, or exercise of its rights, under this Agreement, or (b) any claims of infringement of a third party's intellectual property rights associated with the access, use, broadcasting or other transmission by Friends of any music or other material within the music collection, except for and to the extent such loss or damage under clause (a) or (b) was caused by the willful misconduct or negligence the University.

b. University's Indemnification. To the extent permitted by the laws of the State of Washington, the University agrees to defend, indemnify and hold Friends and its employees (including volunteers and interns), directors, trustees, officers, and affiliates harmless from and against all third-party claims, suits, damages and liabilities, as well as costs and expenses incurred by Friends connected therewith, including reasonable attorneys' fees, arising from the University's performance or non-performance of its obligations, covenants or agreements under this Agreement, except for and to the extent such loss or damage was caused by the willful misconduct or negligence of Friends.

c. Indemnification Procedure. The Party seeking indemnification shall give to the party that is obligated to indemnify (a) prompt notice of any claim or suit coming within the purview of the indemnities contained herein, (b) all relevant facts in its possession or control related to such claim or suit, (c) the right to exclusive control of the defense of any action, and (d) its cooperation in the defense of any such action.

16. Term and Termination

This Agreement will not become effective until such time as Friends becomes the owner of the FCC station license for KEXP pursuant to the prior written consent of the FCC. This Agreement shall then remain in full force and effect through the tenth anniversary of Closing as defined in the Assignment Agreement, with the understanding that the Parties may mutually agree to renew or extend the term.

Either party may terminate this Agreement if the other party breaches this Agreement and such breach is not cured within sixty (60) days of the breaching party being informed thereof.

17. Miscellaneous

a. Assignment; Binding on Successors. Neither party will assign or otherwise transfer any interest in or delegate any rights under this Agreement to any third party without the prior written consent of the other party.

b. No Partnership. The Parties are independent contractors to one another. This Agreement will not be interpreted or construed to create an association, joint venture or partnership between the Parties or to impose any partnership, agency or fiduciary obligation or liability upon either party.

c. Nonwaiver. The failure of either party to insist upon or enforce strict performance of any of the provisions of this Agreement or to exercise any right under this Agreement will not be construed as a waiver or relinquishment to any extent of such party's right to assert or rely upon any such provision or right in that or any other instance; rather, the same will be and remain in full force and effect.

d. Entire Agreement; Amendment. This Agreement constitutes the entire agreement, and supersedes any and all prior or contemporaneous agreements, oral or written, between Friends and the University with respect to the ongoing support of the Station after Friends becomes the owner of the FCC station license for KEXP. No amendment, modification or waiver of any of the provisions of this Agreement will be valid unless set forth in a written instrument signed by the party to be bound thereby.

e. Headings. The headings contained in this Agreement are inserted for convenience of reference only and are not intended to describe the scope or intent of any of the provisions hereof or in any other way affect this Agreement or any part thereof.

f. Severability. Should any term or provision hereof be deemed to be invalid, void or unenforceable either in its entirety or in a particular application, the remainder of this Agreement will nonetheless remain in full force and effect and, if the subject term or provision is deemed to be invalid, void or unenforceable only with respect to a particular application, such term or provision will remain in full force and effect with respect to all other applications.

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g. Applicable Law. This Agreement will be interpreted, construed and enforced in all respects in accordance with the laws of the State of Washington. The Parties hereby irrevocably consent to the jurisdiction of the state and federal courts located in King County, Washington.


FRIENDS OF KEXP

By 

Name THOMAS MARA

Title EXEC DIR

UNIVERSITY OF WASHINGTON

By 

Name Michael K. Young

Title President