

## **TIME BROKERAGE AGREEMENT**

This Time Brokerage Agreement (this "Agreement") is made as of the 9th day of August, 2005, by and between Sanpete County Broadcasting Company, a Utah corporation ("SCBC"), and Mid-Utah Radio, Inc., a Utah corporation ("MUR" and together with SCBC, the "Parties").

### **Background**

SCBC is the owner and operator of radio station KCYQ (formerly KLGL) (FCC Facility ID 72224) which is currently licensed by the Federal Communications Commission ("FCC") to serve Richfield, Utah, and which has a construction permit to serve Elsinore, Utah. MUR is the owner and operator of radio station KLGL (formerly KCYQ) (FCC Facility ID 41895), licensed to Richfield, Utah. SCBC and MUR plan to enter into an agreement providing for their even exchange of the referenced stations, subject to prior FCC consent (the "Transaction").

Until such time as the Transaction shall be consummated pursuant to FCC consent, they wish to enter into a mutual time brokerage agreement, providing for MUR to program substantially all of the broadcast time of KCYQ, and for SCBC to program substantially all of the broadcast time of KLGL, subject to the rules and policies of the FCC.

Accordingly, in consideration of the foregoing and of the mutual promises, covenants, and conditions set forth below, the Parties agree as follows:

#### **1. TRANSFER OF TIME.**

1.1 **Broadcast of Programming.** Effective as of 12:01 a.m. on August 9, 2005 (the "Commencement Date"), SBCB shall cause to be broadcast on KCYQ, programming which is presented to it by MUR, and MUR shall cause to be broadcast on KLGL, programming which is presented to it by SBCB.

1.2 **Consideration.** SBCB and MUR agree that the programming rights granted each other constitute an even exchange, such that neither shall pay the other for such rights.

1.3 **Term.** This Agreement shall commence on the Commencement Date and shall continue until the date on which the Transaction is consummated.

#### **2. PROGRAMMING AND OPERATING STANDARDS AND PRACTICES.**

2.1 **Compliance with Standards.** All programming delivered by each Party to the other's station during the term of this Agreement shall be in accordance with applicable statutes and FCC requirements. Each Party reserves the right to refuse to broadcast any programming of the Party containing matter which it believes is not in the public interest or may be violative of any right of any third Party or which it reasonably determines may be deemed indecent (and not broadcast during the safe harbor for indecent programming established by the

FCC) or obscene by the FCC or any court or other regulatory body with authority over the Station.

2.2 **Political Broadcasts.** Each Party shall maintain and deliver to the other Party all records and information required by the FCC to be placed in the public inspection file of the other Party's station pertaining to the broadcast of political programming and advertisements, in accordance with the provisions of Sections 73.1943 and 73.3526 of the FCC's rules.

2.3 **Handling of Communications.** Each Party shall cooperate in promptly responding to all mail, emails, telegrams or telephone calls relating to the programming it provides to the other Party's station or any other matter relevant to its responsibilities hereunder. Each Party shall provide copies of all such correspondence to the other Party. Promptly upon receipt, each Party shall advise the other of any public or FCC complaint or inquiry known to it, concerning such programming, and each shall provide the other with copies of any letters from the public, including complaints concerning such programming. Notwithstanding the foregoing, each Party shall handle all matters or inquiries relating to FCC complaints about its station and any other matters required to be handled by the station licensee under the rules and regulations of the FCC.

2.4 **Preemption.** Each Party may, from time to time, preempt portions of the programming provided by the other Party to broadcast emergency information or other non-entertainment programs it deems would better serve the public interest. Each Party shall promptly notify the other upon making such determination. Each Party represents and covenants that preemption shall only occur to the extent that Party deems preemption necessary to carry out its obligations as an FCC licensee, and expressly agrees that its right of preemption shall not be exercised in an arbitrary manner or for its commercial advantage. In the event that either Party preempts more than ten (10) hours of programming over any consecutive thirty (30) day period, then the other Party shall be entitled at its sole option to terminate this Agreement without further obligation to the other.

2.5 **Rights in Programs.** All right, title and interest in and to the programming that each Party broadcasts on the other Party's station shall be and remain vested at all times solely in that Party, and not the licensee of the Station.

2.6 **"Payola" and "Plugola".** Each Party agrees that it will take steps, including the periodic execution of affidavits, reasonably designed to assure that neither it nor its employees or agents will accept any gift, gratuity or other consideration, directly or indirectly, from any person or company for the playing of records, the presentation of any programming or the broadcast of any commercial announcement over either of the stations without such broadcast being announced as sponsored. It is further understood and agreed that no commercial message, plugs, or undue reference shall be made in programming presented over the stations to any business venture, profit-making activity or other interest (other than non-commercial announcements for bona fide charities, church activities or other public service activities) without such broadcast being announced as sponsored.

2.7 **Advertising and Programming.** Beginning on the Commencement Date, SCBC shall be solely responsible for any expenses incurred in connection with and shall be entitled to all revenue from the sale of advertising or program time on Station KLGL. Likewise, beginning on the Commencement Date, MUR shall be solely responsible for any expenses incurred in connection with and shall be entitled to all revenue from the sale of advertising or program time on Station KCYQ. Each Party will advise the other of its lowest unit charges for political advertising, and neither Party shall not do anything that would lower the other's lowest unit charges.

2.8 **Compliance with Laws.** At all times during the term of this Agreement, the Parties shall comply in all material respects with all applicable federal, state and local laws, rules and regulations.

### 3. **RESPONSIBILITY FOR EMPLOYEES AND EXPENSES.**

3.1 **SCBC's Employees.** SCBC shall employ and be responsible for the payment of salaries, taxes, insurance and all other costs related to all personnel used in the production of programming provided to KLGL, including on-air talent, and shall also be responsible for the general manager and at least one non-managerial employee of KCYQ.

3.2 **MUR's's Employees.** MUR shall employ and be responsible for the payment of salaries, taxes, insurance, and all other costs related to all personnel used in the production of programming provided to KCYQ, including on-air talent, and shall also be responsible for the general manager and at least one non-managerial employee of KLGL.

3.3 **Licensing Fees and Advertising Expenses.** Each Party shall pay for all costs associated with the production and delivery of its programming to the other Party's station, including but not limited to, (i) all ASCAP, BMI, SESAC and other copyright fees associated with delivery of the programming, (ii) any expenses incurred in connection with its sale of advertising time hereunder (including without limitation sales commissions) in connection with the programming it provides to the other Party's station, and (iii) the salaries, taxes, insurance, and related costs for all sales personnel (including salespeople and traffic personnel).

3.4 **Operating Expenses.** Each Party shall be responsible for the payment when due of all fees and expenses relating to the operation and maintenance of its own station as necessary to maintain the licensed transmitting capability of the station and to fulfill its obligations as the FCC licensee of that Station, including, but not limited to: (i) any rent and utility payments for the towers and transmitters used in the operation of its station, (ii) rent and other payments for equipment used in the operation of its Station, including maintenance expenses, (iii) rent and other payments for studio space, (iv) insurance on its owned or leased equipment used by its Station, and (v) its federal, state and local taxes (the "Operating Expenses").

### 4. **OPERATION OF STATIONS.**

Notwithstanding any provision of this Agreement to the contrary, each Party shall retain ultimate authority and power with respect to the operation of its own Station during the term of this Agreement. The Parties agree and acknowledge that the respective licensee's ultimate

control of its station is an essential element of the continuing validity and legality of this Agreement. Accordingly, each Party shall retain full authority and control over the policies, programming and operations of its own Station, including, without limitation, the decision whether to preempt programming in accordance with Section 2.4 hereof. Each Party shall have full responsibility to effectuate its station's compliance with the Communications Act of 1934, as amended, and with FCC rules, regulations and policies. Each Party shall be responsible for maintaining its station's public inspection files, provided that each Party shall supply the other with documents that may come into its possession and should be placed in the other Party's public inspection file.

## 5. MUTUAL GRANT OF LICENSES.

5.1 License to Use KCYQ Facilities. Effective as of the Commencement Date, SCBC grants MUR a license to access and use the studio and office space and other facilities owned or leased by SBCB for the operation of KCYQ and Station KMTI, also owned by SBCB, and all equipment and furnishings contained therein in the production and broadcasting of programming (collectively, the "Manti Station Facilities"), in accordance with the terms set forth in this Section 5.1 (the "Manti Shared Use License"). The Manti Shared Use License shall have a term beginning on the Commencement Date and ending upon the termination of this Agreement. Notwithstanding the foregoing, MUR's use of the Manti Station Facilities shall be exclusive except for SCBC's right to use such facilities in connection with the satisfaction of its obligations as the licensee of KCYQ, including the use of office space for the employees of SCBC that are required for SCBC to comply with its obligations under Section 3.1 hereof. MUR shall use due care in the use of any property of SCBC and shall not remove any property from SCBC's premises.

5.2 License to Use KLGL Facilities. Effective as of the Commencement Date, MUR grants SCBC a license to access and use the studio and office space and other facilities owned or leased by MUR for the operation of KLGL and Station KSVC, also owned by MUR, and all equipment and furnishings contained therein in the production and broadcasting of programming (collectively, the "Richfield Station Facilities"), in accordance with the terms set forth in this Section 5 (the "Richfield Shared Use License"). The Richfield Shared Use License shall have a term beginning on the Commencement Date and ending upon the termination of this Agreement. Notwithstanding the foregoing, SCBC's use of the Richfield Station Facilities shall be exclusive except for MUR's right to use such facilities in connection with the satisfaction of its obligations as the licensee of KLGL, including the use of office space for the employees of MUR that are required for MUR to comply with its obligations under Section 3.2 hereof. SCBC shall use due care in the use of any property of MUR and shall not remove any property from MUR's premises.

## 6. INDEMNIFICATION.

6.1 **Indemnification Rights.** Each Party will indemnify and hold harmless the other Party, and the shareholders, officers, directors, employees, agents, and affiliates of such other Party, from and against any and all liability, including, without limitation, reasonable attorneys' fees arising out of or incident to (i) any breach by such Party of a representation, warranty, or covenant made herein, (ii) the programming produced or furnished by such Party

hereunder, or (iii) the conduct of such Party, its employees, contractors, or agents (including negligence) in performing its or their obligations hereunder. Without limiting the generality of the foregoing, each Party will indemnify and hold harmless the other Party, and the shareholders, officers, directors, employees, agents, and affiliates of such other Party, from and against any and all liability for libel, slander, infringement of trademarks, trade names, or program titles, violation of rights of privacy, and infringement of copyrights and proprietary rights resulting from the programming produced or furnished by it hereunder. The Parties' indemnification obligations hereunder shall survive any termination or expiration of this Agreement for a period of one year.

6.2 **Procedures.** If any claim (or proceeding relating thereto) by a person or entity not a Party to this Agreement that is covered by the foregoing agreements to indemnify and hold harmless shall arise, the Party who seeks indemnification (the "Indemnified Party") shall give written notice thereof to the other Party (or Parties) (the "Indemnitor") pursuant to the notice provisions set forth in Section 12.10 promptly after the Indemnified Party learns of the existence of such claim or proceeding; provided, however, that the Indemnified Party's failure to give the Indemnitor prompt notice shall not bar the Indemnified Party's right to indemnification unless such failure has materially prejudiced the Indemnitor's ability to defend the claim or proceeding. The Indemnitor shall have the right to employ counsel reasonably acceptable to the Indemnified Party to defend against any such claim or proceeding, or to compromise, settle or otherwise dispose of the same, if the Indemnitor deems it advisable to do so, all at the expense of the Indemnitor; provided that the Indemnitor shall not have the right to control the defense of any such claim or proceeding unless it has acknowledged in writing its obligation to indemnify the Indemnified Party fully from all liabilities incurred as a result of such claim or proceeding; further provided that (i) the Indemnitor shall not effect any settlement relating to any such claim or proceeding unless such settlement includes an unconditional release of such Indemnified Party from all liability on any claims that are the subject of such claim or proceeding and (ii) the Indemnitor may not contractually bind any Indemnified Party without the written consent of the Indemnified Party. The Parties will fully cooperate in any such action, and shall make available to each other any books or records useful for the defense of any such claim or proceeding. If the Indemnitor fails to acknowledge in writing its obligation to defend against or settle such claim or proceeding within twenty (20) days after receiving notice thereof from the Indemnified Party (or such shorter time specified in the notice as the circumstances of the matter may dictate), the Indemnified Party shall be free to dispose of the matter, at the expense of the Indemnitor, in any way in which the Indemnified Party deems to be in its best interest.

## 7. **DEFAULT.**

7.1 **Events of Default.** The following, after the expiration of the applicable cure periods specified in Section 7.2, shall constitute Events of Default under this Agreement:

(a) **Default in Covenants.** Either Party's material default in the observance or performance of any material covenant, condition, or agreement contained herein; or

(b) **Breach of Representation or Warranty.** Either Party's material breach of any representation or warranty made by it herein, or in any certificate or document furnished

pursuant to the provisions hereof, which shall prove to have been false or misleading in any material respect as of the time made or furnished.

7.2 **Cure Periods.** Unless provided otherwise in this Agreement, an Event of Default shall not be deemed to have occurred until twenty (20) days after the non-defaulting Party has provided the defaulting Party with written notice specifying the event or events that if not cured would constitute an Event of Default, and such event has not been cured within such time period.

## 8. **TERMINATION.**

This Agreement shall automatically terminate upon the consummation of the Transaction. In addition, this Agreement shall terminate as provided below.

### 8.1 **Termination Upon Default or Change in FCC Rules or Policies.**

In addition to other remedies available to the Parties hereto at law or equity, and in addition to other provisions providing for termination herein, this Agreement may be terminated as set forth below by either Party by written notice to the other if the Party seeking to terminate is not then in material default or breach hereof, upon either:

(a) an uncured Event of Default; or

(b) a change in FCC rules, policies or precedent that would cause this Agreement to be in violation thereof and such change is final, in effect and has not been stayed, and the Parties are unable, after negotiating in good faith for at least thirty (30) days, to modify this Agreement to comply with the change in FCC rules, policies or precedent.

### 8.2 **Miscellaneous Termination Matters.**

(a) The Parties shall cooperate to effectuate a termination of this Agreement that will cause minimal disruption to the operation of the Station. To that end, the Parties agree to terminate this Agreement on the last day of a month.

(b) Upon any termination of this Agreement, neither Party shall have any further obligation to provide the other with broadcast time on its station. Upon any termination, the Party that acted as time broker of the other Party's station shall be responsible for all debts and obligations to third parties based upon the purchase of air time on the other Party's station.

(c) Upon the termination of this Agreement, each Party shall be responsible for collecting the accounts receivable arising from that Party's programming of the other Party's Station on or after the Commencement Date and prior to the termination of this Agreement.

(d) Notwithstanding anything in Section 6.1 to the contrary, no expiration or termination of this Agreement shall terminate the obligation of each Party to indemnify the other for claims under Section 8 hereof or limit or impair any Party's rights to receive payments due and owing hereunder on or before the date of such termination.

## 9. **REMEDIES.**

In addition to a Party's rights of termination hereunder (and in addition to any other remedies available to it or provided under law), in the event of an uncured Event of Default with respect to either Party, the other may seek specific performance of this Agreement, in which case the defaulting Party shall waive the defense in any such suit that the other Party has an adequate remedy at law and interpose no opposition, legal or otherwise, as to the propriety of specific performance as a remedy hereunder.

## 10. **REPRESENTATIONS, WARRANTIES AND COVENANTS.**

Each Party hereby represents and warrants to the other Party as follows:

10.1 **Organization.** The Party making the representation (hereafter in this Section 10 referred to as "It") is a corporation duly organized, validly existing and in good standing under the laws of the State of Utah and has full power and authority to conduct its business as currently conducted.

10.2 **Authorization; Enforceability.** This Agreement has been duly executed and delivered by It, and is valid, binding, and enforceable against It in accordance with its terms. It has full right, power, authority, and legal capacity to enter into and perform its obligations under this Agreement and to consummate the transactions contemplated hereby. The execution, delivery, and performance of this Agreement and the consummation of the transactions provided for hereby have been duly authorized by all necessary corporate action on Its part, and no other corporate or other proceedings on its part are necessary to authorize the execution or delivery of this Agreement or the transactions contemplated hereby.

10.3 **No Consent.** No consent of any other party and no consent, license, approval, or authorization of, or exemption by, or filing, restriction, or declaration with, any governmental authority, bureau, agency, or regulatory authority, other than the filing of this Agreement with the FCC, is required in connection with the execution, delivery, or performance of this Agreement by It or will affect the validity or performance of this Agreement.

10.4 **No Breach.** Neither the execution or delivery of this Agreement nor the consummation of the transactions contemplated hereby will constitute or result in the breach of any term, condition, or provision of, or constitute a default under, or result in the creation of any lien, charge, or encumbrance upon any of Its property or assets pursuant to Its Articles of Incorporation or By-Laws, any agreement or other instrument to which It is a party or by which any part of Its property is bound, or violate any law, regulation, judgment or order binding upon It.

10.5 **Actions and Proceedings.** There is no judgment outstanding and no litigation, claim, investigation, or proceeding pending against It or, to Its knowledge, threatened before any court or governmental agency to restrain or prohibit, or to obtain damages, or other relief in connection with this Agreement or the consummation of the transactions contemplated hereby or that might adversely affect Its performance under this Agreement.

10.6 **Qualifications.** It is qualified in accordance with the Communications Act of 1934, as amended, and the rules and policies of the FCC to enter into this Agreement and provide programming on the other Party's station in accordance with its terms. Between the date hereof and the termination of this Agreement, It will not take any action that It knows, or has reason to believe, would disqualify it from providing programming on the other Party's station pursuant to this Agreement.

10.7 **Maintenance of Current Coverage.** During the term hereof, It shall intentionally take no action that will have the effect of reducing the effective radiated power and coverage of either station, except in connection with necessary maintenance on or near the transmission facilities of the station.

## 11. MISCELLANEOUS.

11.1 **Modification and Waiver.** No modification or waiver of any provision of this Agreement shall in any event be effective unless the same shall be in writing signed by the Party against whom the waiver is sought to be enforced, and then such waiver and consent shall be effective only in the specific instance and for the purpose for which given.

11.2 **No Waiver; Remedies Cumulative.** No failure or delay on the part of either Party in exercising any right or power hereunder shall operate as a waiver thereof, nor any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, shall preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Parties herein provided are cumulative and are not exclusive of any rights or remedies which they may otherwise have.

11.3 **Choice of Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Utah without regard to the choice of law rules utilized in that jurisdiction, and the obligations of the Parties hereto are subject to all federal, state, or municipal laws or regulations now or hereafter in force and to the regulations of the FCC and all other governmental bodies or authorities presently or hereafter duly constituted.

11.4 **Construction.** The Section headings of this Agreement are for convenience only and in no way modify, interpret or construe the meaning of specific provisions of the Agreement. As used herein, the neuter gender shall also denote the masculine and feminine, and the masculine gender shall also denote the neuter and feminine, where the context so permits.

11.5 **Successors and Assigns.** Neither Party may assign this Agreement without the prior written consent of the other, except to any corporation, partnership, or other business entity that controls, is controlled by, or is under common control with the assigning Party. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

11.6 **Force Majeure.** Each Party acknowledges and agrees that a Party will not be liable for any failure to timely perform any of its obligations under this Agreement if such failure is due, in whole or in part, directly or indirectly, to accidents, fires, floods, governmental

actions, war, civil disturbances, other causes beyond such Party's control or any other occurrence which would generally be considered an event of force majeure.

11.7 **Counterpart Signatures.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

11.8 **Notices.** All notices, requests, demands, and other communications pertaining to this Agreement shall be in writing and shall be deemed duly given when delivered personally (which shall include delivery by facsimile or by Federal Express or other recognized courier service that issues a receipt or other confirmation of delivery) to the Party for whom such communications is intended, or three (3) business days after the date mailed by certified or registered U.S. mail, return receipt requested, postage prepaid, addressed as follows.

If the notice is to SCBC:

Douglas Barton, President  
Sanpete County Broadcasting Company  
P.O. Box 40  
500 North 1600 West  
Manti, UT 84642

If the notice is to MUR:

Marianne Barton, President  
Mid-Utah Radio, Inc.  
390 West 500 North  
Manti, UT 84642

Either Party may change its address for notices by notice to such effect to the other Party.

11.9 **Entire Agreement.** This Agreement (including all attachments, exhibits and schedules) embody the entire agreement between the Parties with respect to the matters contained herein and there are no other agreements, representations, warranties, or understandings, oral or written, between them with respect to the subject matter herein.

11.10 **Severability.** Except as expressly set forth in Section 11.15, if any provision contained in this Agreement is held to be invalid, illegal, or unenforceable in any respect by any court or other authority, then such provision shall be deemed limited to the extent that such court or other authority deems it reasonable and enforceable, and as so limited shall remain in full force and effect. In the event that such court or other authority shall deem any such provision wholly unenforceable, this shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision or provisions had not been contained herein.

11.11 **No Joint Venture.** The Parties agree that nothing herein shall constitute a joint venture between them. The Parties acknowledge that call letters, trademarks and other

intellectual property shall at all times remain the property of the respective Parties and that neither Party shall obtain any ownership interest in the other Party's intellectual property by virtue of this Agreement.

11.12 **Damage to Station.** In the event of damage or destruction to either Party's Station (other than damage or destruction caused by the other Party, its employees or agents), the Party that is the licensee of the damaged station shall proceed to repair, replace, or restore the station to its former condition as promptly as is commercially reasonable. In the event of damage or destruction caused by the Party acting as the time broker of the station, its employees or agents, all necessary repairs, restoration or replacement shall be at the sole costs of that Party, and shall be completed as promptly as is commercially reasonable.

11.13 **Regulatory Changes.** In the event of any order or decree of an administrative agency or court of competent jurisdiction, including without limitation any material change or clarification in FCC rules, policies, or precedent, that would cause this Agreement to be invalid or violate any applicable law, and such order or decree has become effective and has not been stayed, the Parties will use their respective best efforts and negotiate in good faith to modify this Agreement to the minimum extent necessary so as to comply with such order or decree without material economic detriment to either Party, and this Agreement, as so modified, shall then continue in full force and effect. In the event that the Parties are unable to agree upon a modification of this Agreement so as to cause it to comply with such order or decree without material economic detriment to either Party, then this Agreement shall be terminated consistent with Section 8.2 of this Agreement.

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

MID-UTAH RADIO, INC.

By: \_\_\_\_\_  
Marianne Barton, President

SANPETE COUNTY BROADCASTING  
COMPANY

By: \_\_\_\_\_  
Douglas Barton, President