

## **WEGG ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT (the "Agreement") is entered into as of the \_\_\_ day of \_\_\_\_\_, 2015 ("the Effective Date"), by and between **Conner Media Corporation**, a North Carolina corporation ("Seller") and **Surge Media, LLC**, a \_\_\_\_\_ limited liability company ("Buyer").

### **WITNESSETH:**

**WHEREAS**, Seller is the licensee of AM broadcast station WEGG, Rose Hill, North Carolina (Facility ID No. 17745) (the "Station"); and

**WHEREAS**, Buyer and Seller are parties to a Time Brokerage and Option Agreement (the "TBA") which provided, among other things, an option whereby Buyer could purchase the Station; and

**WHEREAS**, Buyer hereby exercises the option provided in the TBA and wishes to acquire the Station and certain assets associated therewith on the terms set forth in the TBA; and

**WHEREAS**, the license issued by the Federal Communications Commission ("Commission" or "FCC") for the operation of the Station (the "License") may not be assigned to Buyer without the prior written consent of the Commission;

**NOW, THEREFORE**, in consideration of the mutual promises, covenants, and conditions contained herein, the parties do hereby agree as follows:

### **1. SALE OF ASSETS AND ASSIGNMENT OF LICENSES**

At the Closing, and subject to the provisions of Paragraph 2 hereof, Seller shall sell or assign and transfer to Buyer and Buyer shall purchase from Seller the following assets ("Assets"), free and clear of liens, encumbrances, and other security interests except as specifically provided herein:

A. **Tangible Property**: The equipment currently used in the operation of the Station, as listed in Exhibit A hereto (the "Equipment").

B. **Licenses and Authorizations**: The licenses, permits, permissions and other authorizations as listed in Exhibit B hereto (including without limitation the right to the use of the Station's call sign) which are issued by the FCC (the "FCC Licenses") or other governmental agencies and that are associated exclusively with the Station, and all applications for modification, extension or renewal thereof pending on the Closing Date (the "Licenses").

C. **Intangible Personal Property**: All good will, trademarks, service marks, copyrights, trade names, common law property rights and all other intangible personal property owned by Seller and intended for use by it exclusively in connection with the operation of the Station (the "Intangible Property").

D. **Records**: Such of Seller's files, warranties, technical data, reports and other records relating exclusively to the Station as Buyer may reasonably request (the "Records").

E. **Site Lease**: An assignment of the lease between Seller and the owner of the transmitter site currently used by the Station (the "Site Lease").

2. **ASSETS EXCLUDED**

It is understood and agreed that the Assets purchased pursuant to this Agreement shall not include (a) assets owned or held by Seller and intended for use in Seller's other broadcast stations and businesses; (b) all contracts and agreements associated with the Station, including but not limited to contracts and agreements for employees, programming and advertising, excepting only the Site Lease; (c) Seller's cash, bank accounts, accounts or notes receivable and investments; and (d) Seller's tax and corporate records, together with all records that do not relate exclusively to the Station.

3. **PURCHASE PRICE AND TERMS**

The purchase price for the Assets being purchased by Buyer hereunder (the "Purchase Price") is One Hundred Twenty Thousand Dollars (\$120,000). A deposit of Five Thousand Dollars (\$5,000) is being paid to Seller upon execution of this Agreement (the "Deposit"). The remainder of the Purchase Price shall be paid in the form of a wire transfer on the Closing Date. The Purchase Price shall be allocated among the Assets as set forth in Exhibit C. Both Buyer and Seller shall rely upon such allocation for all tax reporting purposes.

4. **PRORATIONS AND ADJUSTMENTS**

Except to the extent provided in the TBA, all taxes, prepayments (to the extent Buyer obtains the asset for which such prepayment was made), deposits and any income and operating expenses of the Station shall be prorated between Buyer and Seller as of 12:01 a.m. on the Closing Date. Insofar as feasible, prorations under this paragraph shall be determined and paid on the Closing Date as an adjustment to the Purchase Price, with a final accounting of prorated items, and the sum due from one party to another pursuant to this proration paid, within sixty (60) days after the Closing Date.

5. **EXPENSES**

FCC filing fees for the application described in Paragraph 7 hereof, together with the cost of required public notices, recording fees, documentary stamp taxes, revenue stamps and all other similar charges on conveyances from Seller to Buyer all will be paid one-half by Buyer and one-half by Seller. All other expenses incurred with respect to the preparation and implementation of this Agreement and the transactions contemplated hereunder shall be paid by the party incurring the same.

6. **ASSUMPTION OF LIABILITIES**

At the Closing Buyer shall not assume responsibility for any of Seller's liens, taxes, debts, accounts payable, contracts or employment-related obligations, including severance pay, health insurance, retirement plans or agreements (except for the Site Lease).

7. **FCC APPLICATION**

Buyer and Seller agree to have their respective portions of the FCC license assignment application on FCC Form 314 (the "Application"), prepared and submitted as soon as practicable, but in no event later than five (5) business days, after the signing of this Agreement. Buyer and Seller shall prosecute the Application in good faith and with due diligence such that it may be granted and become final as expeditiously as practicable.

8. **TERMINATION**

A. If the Commission has not granted the Application within nine months after the Application is filed, then either Buyer or Seller may terminate this entire Agreement upon written notice to the other, provided that the party seeking to terminate is not in default hereunder.

B. Either party may terminate this Agreement if the other shall be in material breach of this Agreement or the TBA and if the said breach shall not have been cured within ten (10) days of written notice thereof by the party seeking to terminate, provided, however, that if any such breach is not reasonably susceptible of being cured within ten (10) days, then the party in breach shall have undertaken to cure the breach with all reasonable diligence and shall have cured the breach as promptly as is reasonably practicable.

9. **REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller makes the following representations and warranties, all of which have been relied upon by Buyer in entering into this Agreement and, except as specifically otherwise provided, all of which shall be true and correct on the Closing Date:

A. **Organization**: Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of North Carolina and has full power and authority to enter into and perform this Agreement.

B. **Authorization**: The execution, delivery and performance of this Agreement have been duly authorized by the Seller, and constitute a valid and binding agreement of Seller, enforceable in accordance with its terms.

C. **No Contravention**: The execution, delivery and performance of this Agreement by Seller will not violate any provision of its organizational documents and will not result in the breach of, or constitute a default under, or violate any provision of, any agreement or

other instrument to which Seller or any of its principals is a party or by which it or they or any of the Assets is bound or affected.

D. **Licenses:** Exhibit A contains a complete list of all the authorizations issued by the Commission and other governmental agencies, together with any applications pending for authorizations, needed to operate the Station pursuant to the Licenses.

E. **Equipment:** Seller has good and marketable title to the Equipment, free and clear of all mortgages, liens, charges or encumbrances. Buyer has examined the Equipment prior to executing this Agreement and accepts its present condition, subject to an allowance for reasonable wear and tear pending the Closing.

F. **Compliance with Laws; Litigation:** There is no judgment outstanding and, to the best of Seller's knowledge, no litigation, proceeding or investigation of any nature (other than that intended to affect substantial segments of the industry as a whole) pending or threatened which is likely to materially and adversely affect the operation of the Station, the use by Buyer of the Assets, or Seller's ability to timely consummate all of the transactions contemplated herein.

G. **Site Lease:** On the Closing Date the Site Lease will be in full force and effect, unimpaired by any action or inaction of Seller.

#### 10. **COVENANTS OF SELLER**

A. **Negative:** Between the date hereof and the Closing Date or earlier termination of this Agreement, Seller will not sell, assign, lease, convey, or otherwise transfer or dispose of any of the Assets, whether now owned or hereafter acquired other than in the ordinary course of business, unless, in the case of the Equipment, the same are replaced in the normal course of business by assets of at least equal quality and usefulness, nor create any lien or encumbrance upon any of the Assets.

B. **Affirmative:** Pending the Closing Date, Seller will:

(i) Give to Buyer, its counsel, engineers, accountants and other authorized representatives, reasonable access during normal business hours to all of the properties, premises, books and records pertaining to the Station for the purposes of inspection;

(ii) Promptly notify Buyer of any unusual or material developments with respect to the Station; and remove any and all violations of Commission rules or regulations which come to its attention or assume responsibility for the costs of removing same, including the payment of any fines that may be assessed for any such violation; and

(iii) Maintain the Equipment in its present condition (reasonable wear and tear excepted) and, subject to the LMA, operate the Station in the ordinary course.

11. **REPRESENTATIONS, WARRANTIES AND COVENANTS OF BUYER**

Buyer makes the following representations, warranties and covenants, all of which have been relied upon by Seller in entering into this Agreement and, except as specifically otherwise provided, all of which shall be true and correct on the Closing Date:

A. **Organization:** Buyer is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of \_\_\_\_\_, is authorized to do business in the State North Carolina, and has full power and authority to enter into and perform this Agreement.

B. **Authorization:** The execution, delivery and performance of this Agreement have been duly authorized by Buyer, and constitute a valid and binding Agreement of Buyer, enforceable in accordance with its terms.

C. **No Contravention:** The execution, delivery and performance of this Agreement by Buyer will not violate any provision of its organizational documents and will not result in the breach of, or constitute a default under, or violate any provision of, any agreement or other instrument to which Buyer or any of its principals is a party or by which it or they is bound or affected.

D. **Qualification:** Buyer is fully qualified, legally and financially, to become the licensee of the Station and to timely consummate all of the transactions contemplated by this Agreement.

12. **CONTROL OF STATION**

Nothing contained in this Agreement shall be construed as giving Buyer any right to directly or indirectly supervise or direct the operation of the Station prior to the Closing. Subject to the limited extent provided in the TBA, such operation shall be the sole responsibility of Seller. Effective on the Closing Date and thereafter, Seller shall have no control over, nor right to intervene or participate in, the operation of the Station.

13. **RISK OF LOSS**

The risk of loss or damage to any of the Assets shall be upon Seller prior to the Closing, and thereafter upon Buyer. In the event of such loss or damage prior to the Closing, Seller shall promptly replace, repair or restore any such damaged Assets as promptly as practicable and apply the proceeds of, or any claim for any loss payable under, any insurance policy with respect thereto to repair, replace, or restore such lost or damaged assets.

14. **CLOSING DATE AND PLACE**

The date of the Closing (the "Closing Date") and time shall be fixed by Buyer by giving at least five (5) days' written notice thereof to Seller. Unless extended by mutual written consent of Buyer and Seller, the Closing Date shall be within ten (10) days after the date upon which the FCC shall have granted the Application, provided, however, that if a petition to deny or informal objection shall have been filed against the Application, then, at the option of either Buyer or Seller, the Closing Date shall be within ten (10) days of the date that FCC grant of the Application shall have become final (*i.e.*, no longer subject to appeal or review by the Commission or any court of competent jurisdiction). The Closing shall take place at the Seller's offices or at such other location or in such other manner as the parties may mutually agree, including an exchange by email or fax of scans of executed counterparts of mutually-acceptable documents. At the Closing, (a) Seller shall deliver to Buyer such bills of sale, assignments and other instruments of conveyance transferring title or assignment of the Assets as Buyer may reasonably request and (b) Buyer shall pay the Purchase Price (less the Deposit) to Seller by wire transfer to such account as Seller shall specify.

15. **REMEDIES UPON TERMINATION OR DEFAULT**

If this Agreement is terminated due to no fault of either Buyer or Seller, then neither party shall have any liability to the other and Seller shall return the Deposit to Buyer. If Buyer has the right to terminate this Agreement due to a material default of Seller (other than a default that is caused by a default of the Buyer) then Buyer may seek a decree of specific performance, it being agreed by both Buyer and Seller that the Assets to be conveyed hereunder are unique and irreplaceable, and that monetary damages alone may not suffice to compensate Buyer for the loss of an opportunity to acquire the Station on the terms set forth herein. If Seller terminates this agreement due to a material default of Buyer, then Seller may retain the Deposit as liquidated damages, it being agreed by both Buyer and Seller that actual damages will be difficult to calculate and that the Deposit is a reasonable estimate thereof.

16. **INDEMNIFICATION**

Seller shall indemnify, defend, and hold Buyer harmless against all claims, demands and legal actions and will reimburse Buyer for any damages (including legal fees incurred with respect to same) resulting from, or arising out of, the material breach by Seller of any of its representations, warranties or covenants set forth herein, or from the operation of the Station prior to the Closing Date (except to the extent that Buyer is responsible therefor under the TBA). Buyer shall indemnify, defend and hold Seller harmless against all claims, demands and legal actions, and will reimburse Seller for any damages (including legal fees incurred with respect to same) resulting from, or arising out of, the material breach by Buyer of any of its representations, warranties or covenants set forth herein or from Buyer's operation of the Station following the Closing Date. Should any claims covered by the foregoing provisions be asserted against either party, the party being charged shall notify the other promptly and give it an opportunity to defend the same; the parties shall extend reasonable cooperation to each other in connection with such defense.

17. **SURVIVAL**

The representations, warranties, covenants, and agreements contained herein and in any certificate or other instrument delivered pursuant hereto shall be deemed and construed to be continuous and shall survive the Closing hereunder for a period of six (6) months.

18. **BROKER/FINDER**

Buyer and Seller hereby mutually represent that there are no finders, consultants or brokers involved in this transaction and that neither Seller nor Buyer has agreed to pay any brokers', finders' or consultants' fees in connection with this transaction.

19. **NOTICES**

All necessary notices, demands and requests shall be deemed duly given if mailed by registered or certified mail, postage prepaid, addressed as follows:

Seller: Conner Media, Inc.  
702 Hartness Road  
Statesville, North Carolina 28677  
Attn: Dr. Ronald Benfield, President

Buyer: Surge Media, LLC  
804-H Bryce Court  
Wilmington, North Carolina 28405  
Attn: Kenneth Santarelli, Managing Member

16. **CONSTRUCTION**

This Agreement shall be construed and enforced in accordance with the laws of the State of North Carolina. If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and to this end only the provisions of this Agreement are declared severable.

21. **ASSIGNMENT AND BENEFIT**

This Agreement is not assignable by either Buyer or Seller without written consent of the other. This Agreement and all of the obligations set forth herein shall be binding upon the parties and their respective heirs, assigns and successors.

22. **COOPERATION**

Each party hereto agrees to perform such further acts and to execute and deliver such further documents as may be necessary or desirable to effectuate the purposes of this Agreement.

23. **TIME OF ESSENCE**

Time is of the essence with respect to every provision of this Agreement.

24. **EFFECT OF TBA**

Buyer acknowledges that, pursuant to the TBA, it has been present at the Station, has become familiar with its operation, and has assumed and will continue to assume responsibility for certain aspects of the business and operation of the Station, all under the supervision and ultimate control of the Seller. Consequently, notwithstanding anything to the contrary herein, the parties agree that all of the representations, warranties and covenants of Seller herein are qualified such that Seller will be relieved of liability with respect to claims, events and conditions to the extent to which (a) Buyer or its agents, personnel or representatives have or had actual knowledge of such matters, (b) the actions or inactions of Buyer, its agents, personnel or representatives, under color of the TBA, were or are a proximate cause or (c) adverse changes or claimed breaches of Seller's representations, warranties or covenants could have been mitigated had such matters been timely reported to Seller following observation or knowledge thereof by Buyer, its agents, personnel or representatives.

25. **ENTIRE AGREEMENT**

Together with the TBA, this Agreement embodies the entire agreement among the parties with respect to the Station and supersedes all prior agreements and understandings among the parties. No attempted change, termination or waiver of any of the provisions hereof shall be binding except by a written instrument signed by the party against which the same is sought to be enforced.

26. **EXECUTION IN COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

EXECUTED on the day first above written.

ATTEST:

Alfreda Smith

CONNER MEDIA, INC.

By

Ronald Benfield  
Ronald Benfield, President

ATTEST:

Alfreda Smith

SURGE MEDIA, LLC

By

Kenneth Santarelli  
Kenneth Santarelli, Managing Member



## Exhibit B

### FCC Licenses and Authorizations

WEGG main station license, FCC File No. BZ-20090917ADG, as renewed by BR- 20110719AAQ, expiring December 1, 2019.