

## **Amendment and Addendum to Purchase Agreement**

**May 29, 2020**

Grand Valley State University, a Michigan constitutional body corporate ("Buyer"), and Goodrich Radio, LLC, a Michigan limited liability company ("Seller"), enter into this Amendment and Addendum to Purchase Agreement effective as of May 29, 2020 (the "Effective Date").

### **RECITALS**

A. Seller and Buyer have entered into that certain Agreement for Purchase of Translator and Certain Assets dated as of April 28, 2020 (the "Purchase Agreement").

B. Seller and Buyer desire to amend and supplement the Purchase Agreement to provide for the interim operation of FM Translator Station W237CZ, Grand Rapids, MI (the "Station") until the Closing of the transaction contemplated in the Purchase Agreement.

### **AGREEMENT**

NOW, THEREFORE, taking the foregoing into account, and in consideration of the mutual covenants and agreements set forth herein and in the Purchase Agreement, the parties intending to be legally bound, hereby agree as follows:

#### **I. RATIFICATION OF PURCHASE AGREEMENT**

Buyer and Seller hereby ratify the Purchase Agreement and all of the terms, conditions, obligations and other requirements set forth therein. Except as may be specifically provided in this Amendment and Addendum to Purchase Agreement, the Purchase Agreement shall remain in full force and effect and nothing herein shall amend, modify or otherwise alter any provision of the Purchase Agreement, or the obligations, responsibilities, representations, covenants or warranties of the parties set forth in the Purchase Agreement. All defined terms in the Purchase Agreement shall have the same meaning and definitions when used in this Amendment and Addendum to Purchase Agreement.

#### **II. INTERIM OPERATION OF THE STATION**

**2.1 Carriage Of WGVU-FM.** Commencing at 12:01 a.m. on June 8, 2020, or at a different date and time that Seller and Buyer shall agree to in writing, Seller shall make the main signal of Buyer's station WGVU-FM, Allendale, MI, the primary FM station retransmitted on the Station, and shall rebroadcast the main signal of WGVU-FM on the Station. The rebroadcast of WGVU-FM on the Station shall continue until the Closing contemplated in the Purchase Agreement or the termination of the Purchase Agreement as provided in Article X therein, whichever shall occur first. In the event the Purchase Agreement is terminated prior to Closing, the parties may agree to extend the retransmission of WGVU-FM on the Station, but if they fail to do so Seller shall cease rebroadcasting WGVU-FM on the Station effective as of the date the

Purchase Agreement is terminated. Buyer hereby consents to Seller rebroadcasting WGVU-FM on the Station as provided herein.

**2.2. Modification of Station.** The parties recognize that in order to rebroadcast WGVU-FM on the Station it may be necessary to modify the orientation of the Station's receive antenna and provide additional equipment including a receiver to maximize the received signal strength of WGVU-FM to implement the provisions of Section 2.1. Buyer agrees to assist Seller in reorienting the Station's receive antenna and providing additional equipment as may be necessary to maximize WGVU-FM's signal strength at the receive antenna to best implement the rebroadcast of WGVU-FM on the Station, including providing certain equipment and any engineering, technical or maintenance services that are or may be required to install equipment and reorient the receive antenna. Buyer shall be responsible for any of its own costs associated with the provision and installation of additional equipment and reorienting the receive antenna and agrees to reimburse Seller for the reasonable costs it may incur with respect to the addition of equipment and reorienting the receive antenna. In the event the Purchase Agreement is terminated prior to Closing and the parties do not agree to continue rebroadcasts of WGVU-FM on the Station, Buyer shall have the right to remove any equipment it has provided and agrees to assist Seller in returning the orientation of the receive antenna so that the Station is in the same condition, minor wear and tear excepted, as it was prior to the modification described herein, and in so doing shall be responsible for any of its costs, and shall reimburse Seller for the reasonable costs it may incur in returning the Station to its status prior to the modification.

**2.3. Notification to FCC.** Seller shall have responsibility for notifying the FCC of the change in the Station's primary FM station being retransmitted in accordance with Section 74.1251(c) of the FCC's rules (47 CFR Section 74.1251(c)). Seller shall provide such notice to the FCC no later than the first business day after it commences broadcasting WGVU-FM on the Station and shall concurrently provide a copy of the FCC notification to Buyer. Buyer agrees that it shall reimburse Seller for its reasonable costs, including attorney's fees, in filing the notice with the FCC.

**2.4. Station Identification.** Buyer shall provide as part of its program material broadcast on WGVU-FM, a station identification for the Station in accordance with the provisions of Section 74.1283(c)(1) of the FCC Rules (47 CFR Section 74.1283(c)(1)) as follows: The station identification shall include the Station's call sign (W237CZ) and location (Grand Rapids, MI), and be made three times each day, with one identification between 7 a.m. and 9 a.m., one between 12:55 p.m. and 1:05 p.m., and one between 4 p.m. and 6 p.m. Buyer shall have the sole discretion to determine when it makes these station identifications within the aforementioned time periods. Seller shall provide Buyer with its name, address and telephone number, or the name, address and telephone number of its service representative that Buyer can provide to the FCC if it so requires in the event of a malfunction of the Station, and shall have responsibility for maintaining such information as current.

**2.5. Station Control.** Seller shall retain ultimate control of the Station until the Closing set forth in the Purchase Agreement, including responsibility for compliance with applicable FCC rules and regulations regarding the Station's operation.

### **III. EXPENSE REIMBURSEMENT**

**3.1 Operating Expenses.** During the period WGVU-FM is rebroadcast on the Station Buyer shall reimburse Seller for its expenses related to the lease of the Station's antenna tower, which includes electric utility service, and telephone line service at the Station's transmitter site (together the "Operating Expenses") as follows.

**A. Notice.** (i) No later than the date the Station commences rebroadcasting WGVU-FM, Seller shall provide Buyer with written notice setting forth the monthly amount of the tower lease payments for the Station, along with directions regarding the method of payment used to pay the tower lease, including the name and address of the payee, the date the payment is due, and any other relevant information Buyer may need, require or request to make the tower lease payments ("Tower Lease Information"). (ii) No later than ten (10) business days after receipt of an invoice for telephone line service, Seller shall provide Buyer with written notice of the Station's telephone line costs, including a copy of the utility service provider's invoice, for each month or other applicable time period reflected in the utility service provider's invoice ("Utility Cost Information"). This documentation shall include the name and address of the payee, the date the payment is due, and any other relevant information Buyer may need, require or request to pay the electric utility costs. If the utility service provider's invoice includes service for facilities other than those related directly to the Station, Seller shall include in the written notice an allocation of the electric costs solely for the Station and an explanation of how Seller determined the allocation. If Buyer has no disagreement with Seller's written documentation and allocation of the telephone line costs for the Station, it shall pay such costs in accordance with subparagraph (B) below. If Buyer disagrees with the allocation of telephone line costs for the Station, it shall notify Seller of such disagreement and the parties agree to cooperate in determining the amount of the telephone line costs allocable to the Station.

**B. Payment.** Seller authorizes Buyer to make direct payment of the Operating Expenses as follows:

(i) The tower lease payment for Seller's benefit to TRT Company or such other party or entity as is appropriate as set forth in the Tower Lease Information and under the terms of the tower lease.

(ii) The telephone line service costs to the utility service provider, if the invoice for telephone line service is solely for the Station, in accordance with the information provided in the Utility Cost Information. If the telephone line costs provided in the Utility Cost Information is the cost allocable to the Station, then that allocable amount to Seller.

**C. Hold Harmless.** Other than as set forth in this Amendment and Addendum to Purchase Agreement Seller shall have ultimate responsibility for payment of the Operating Expenses. Seller agrees to hold Buyer harmless for any payment of Operating Expenses that Buyer makes at Seller's direction, whether pursuant to the provisions set forth herein, the information provided in the Tower Lease Information or Utility Cost Information, or otherwise, but which is not received by the designated payee or recipient or otherwise recorded for Seller's benefit. Buyer shall not incur or have any liability regarding the Operating Expenses beyond the costs for the Operating

Expenses as set forth herein, including any claims, losses, liabilities, damages, recoveries, deficiencies, costs or expenses (including, without limitation, interest, penalties and attorneys' fees whether incurred in defending claims or in enforcing the provisions of this Amendment and Addendum to Purchase Agreement).

**D. Allocation of Payments.** Seller shall be responsible for all Operating Expense payments prior to the date the Station commences rebroadcasting WGVU-FM. To the extent Seller has made Operating Expense payments that include part or all of a month or other time period after the Station commences rebroadcasting WGVU-FM, Buyer agrees to reimburse Seller for the pro rata portion of such payment that applies to the period after the Station commences rebroadcasting WGVU-FM. Seller shall provide written notice of any Operating Expense payment it has made that covers a period after the Station commences rebroadcasting WGVU-FM, including a calculation of the portion of the payment for which Buyer is to reimburse Seller. If Buyer accepts such calculation, within ten (10) business days of receipt of this notice Buyer shall reimburse Seller for that portion of the Operating Expense payment applicable to the period subsequent to the commencement of WGVU-FM rebroadcasts on the Station. If Buyer disagrees with Seller's calculation of the allocable Operating Expense payments for which it is to be reimbursed it shall notify Seller of such disagreement, including the amount it believes is reimbursable to Seller, and the parties agree to cooperate in determining the amount of the reimbursement due that Buyer shall then pay to Seller.

**E. Termination of Expense Payments.** In the event the Purchase Agreement is terminated prior to Closing and the parties do not reach agreement for the continued rebroadcasts of WGVU-FM on the Station, Buyer shall have no obligation or responsibility to pay for any Operating Expenses after rebroadcasting of WGVU-FM on the Station ends. Seller shall reimburse Buyer for any Operating Expenses Buyer may have paid that includes any period of time after WGVU-FM is no longer rebroadcast on the Station upon receipt of written notice from Buyer of such payments and the amount Seller is to reimburse Buyer. If Seller disagrees with the amount of Operating Expenses it is to reimburse Buyer it shall notify Buyer in writing, including the amount it believes is reimbursable to Buyer, and the parties agree to cooperate in determining the amount of reimbursement due that Seller shall then pay to Buyer.

**3.2 Article II Expenses.** Seller shall notify Buyer in writing of any reasonable expenses it has incurred for which Buyer has agreed to reimburse Seller under Article II of this Amendment and Addendum to Purchase Agreement ("Article II Expenses"). Such notice shall include details of the nature of the costs incurred, to whom the cost is payable, whether Seller has paid such costs, and if Seller has not paid such costs when such costs are payable. Within fifteen (15) business days of receipt of Seller's notice, Buyer either shall accept the amount of the Article II Expenses and reimburse Seller for those costs, or notify Seller in writing that it disagrees that the amount of expenses set forth in Seller's written notice of the Article II Expenses is reasonable or accurate. If Buyer notifies Seller of such disagreement to the reasonableness or accuracy of the reimbursable Article II Expenses, it shall include to the extent possible the reasons for its determination and what it believes is the correct or reasonable amount of Article II Expenses to be reimbursed. If Seller accepts Buyer's notice it shall notify Buyer in writing and Buyer shall pay that amount within five (5) business days. If Seller does not accept Buyer's notice the parties agree

to further negotiate and cooperate in determining the amount of the Article II Expenses to be reimbursed to Seller.

#### **IV. MISCELLANEOUS**

**4.1. Notices.** Any notice required or permitted by this Amendment and Addendum to Purchase Agreement shall be given in accordance with Section 11.1 of the Purchase Agreement.

**4.2. Entire Agreement; Binding Effect.** This Amendment and Addendum to Purchase Agreement together with the Purchase Agreement contain the entire agreement of the parties with respect to their subject matter. This Amendment and Addendum to Purchase Agreement, and the Purchase Agreement, may be modified or amended only by written instrument signed by the parties hereto. This Amendment and Addendum to Purchase Agreement, together with the Purchase Agreement, bind and inure to the benefit of the parties hereto and their respective heirs, representatives, successors and permitted assignees, as the case may be.

**4.3. Specific Performance.** Seller acknowledges that rebroadcasting WGVU-FM on the Station is unique with no reasonable alternative or substitute readily obtainable on the open market and that, if Seller fails to perform its obligations under this Amendment and Addendum to Purchase Agreement, money damages alone will not be adequate to compensate Buyer for its injury. Therefore, Seller agrees and acknowledges that in the event of Seller's failure to perform its obligation to rebroadcast WGVU-FM on the Station, Buyer will be entitled to specific performance of the terms of this Amendment and Addendum to Purchase Agreement and Seller's obligation to rebroadcast WGVU-FM on the Station. If any action is brought by Buyer to enforce this Amendment and Addendum to Purchase Agreement, Seller will waive the defense that there is an adequate remedy at law, and Buyer will be entitled to receive from Seller all court costs, attorney's fees and other out-of-pocket expenses that Buyer incurs in enforcing its rights under this provision.

**4.4. Counterparts.** This Amendment and Addendum to Purchase Agreement may be executed in two or more counterparts each of which will be deemed an original, but all of which together will constitute one and the same instrument. Photocopies, facsimile transmissions, and other reproductions of this executed original (with reproduced signatures) will be deemed to be original counterparts of this Amendment and Addendum to Purchase Agreement.

**4.5 Expenses.** Each party will pay all costs and expenses incurred or to be incurred by it in negotiating and preparing this Amendment and Addendum to Purchase Agreement.

**4.6. Attorneys Fees.** If any litigation arises with respect to this Amendment and Addendum to Purchase Agreement or any of the transactions contemplated herein, each party will be responsible for its own attorney's fees and other costs of such litigation, except to the extent otherwise expressly provided herein.

**4.7. Construction.** This Amendment and Addendum to Purchase Agreement will be deemed mutually drafted so as not to be construed against any party as the draftsman of the document.

**4.8. Captions and Use of Pronouns.** The captions inserted herein are used only as a matter of convenience and in no way define, limit, construe, affect, or describe the scope or intent of this Amendment and Addendum to Purchase Agreement. Wherever herein the singular is used, the same will include the plural, and the masculine gender will include the feminine and neuter genders and vice versa, whenever the context so requires.

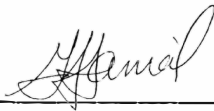
**4.9. Jurisdiction.** This Amendment and Addendum to Purchase Agreement shall be governed by and interpreted in accordance with the laws of the State of Michigan, without regard to principles of conflict of laws.

**4.10. Assignment; Benefit of Agreement.** Neither Seller nor Buyer will assign or otherwise transfer this Amendment and Addendum to Purchase Agreement or their interests herein without the prior written approval of the other. Except for the respective representatives, successors, and permitted assigns of the parties, this Amendment and Addendum to Purchase Agreement is being executed by the parties solely for their benefit and not for the benefit of any other person or entity, and nothing contained herein will be interpreted or construed as conferring any benefit or right upon any person or entity not a party to this Amendment and Addendum to Purchase Agreement.

[Signature Page Follows]

**BUYER:**

Grand Valley State University

By: 

Its Vice President for Finance & Administration

**SELLER:**

Goodrich Radio, LLC

By: 

Its Pres/Sec