

TIME BROKERAGE AND OPTION AGREEMENT

This Time Brokerage and Option Agreement is made and entered into this 18 day of November, 2019 by and between the Board of Education of Kalamazoo Public Schools ("Licensee"), and the Board of Trustees of Western Michigan University on behalf of WMUK 102.1 FM ("Broker")(both hereinafter "the Parties").

WHEREAS, Licensee is the licensee of FM station WKDS licensed to Kalamazoo, MI (Facility ID 4198) (the "Station"), pursuant to licenses issued by the Federal Communications Commission (the "FCC");

WHEREAS, Broker desires to produce radio programs in conformity with this Agreement and the rules, regulations, and policies of the FCC, and to provide those programs to Licensee for broadcast on the Station;

NOW THEREFORE, in consideration of the above recitals and mutual promises and covenants contained herein, the parties, intending to be legally bound, agree as follows:

WITNESSETH:

1. Facilities. Licensee agrees to make the broadcasting transmission facilities available to Broker to broadcast on the Station, for up to twenty-four (24) hours per day, seven (7) days per week.

2. Payments. Broker hereby agrees to pay Licensee for broadcast of the programs hereunder the amounts specified in Attachment A which shall not be more than the Licensee's operating costs.

3. Term. The initial term of this Agreement shall begin on **December 1, 2019** and shall continue for twelve (12) months unless earlier terminated as provided herein or on an earlier sale of the Station (the "Initial Term").

4. Programs. Broker shall furnish or cause to be furnished the programming.

All programs shall be in good taste and in accordance with FCC requirements.

5. Licensee Operational Responsibility.

(a) Licensee Facilities/Operations Responsibility. Licensee shall be responsible for the maintenance of the Station's transmission system.

(b) Licensee Regulatory Responsibility. Licensee shall be responsible for the Station's compliance with all applicable provisions of the Communications Act of 1934, as amended, the rules, regulations, and policies of the FCC, including all technical regulations governing the operation of the Station. Licensee shall maintain all licenses, permits, and other authorizations as are necessary for the operation of the Station (including all FCC licenses, permits, and authorizations), in full force and effect for the term of this Time Brokerage Agreement, unimpaired by any acts or omissions of Licensee. Licensee represents that there is not now pending or, to the best of Licensee's knowledge, threatened any action by the FCC or any other party to revoke, cancel, suspend, refuse to renew, or modify adversely any of the licenses, permits, or authorizations held by Licensee with respect to the Station, and, to the best of Licensee's knowledge, no event has occurred that allows or, after notice or lapse of time or both, would allow the revocation or termination of such licenses, permits, or authorizations or the imposition of any restriction thereon of such a nature that may limit the operation of the Station.

6. Broker Operational Responsibility. Broker shall employ and be responsible for the salaries, taxes, insurance, and related costs for all its personnel and programming aired on the Station hereunder. Broker shall pay all fees to ASCAP, BMI and SEASAC and for any other copyright fees attributable to its programming broadcast on the Station. Broker shall ensure that the proper station Identifications are aired and shall assist Licensee in preparation of the quarterly programs and issues lists.

7. Condition of Facilities. Licensee represents that the Station's facilities and equipment comply in all material respects with all applicable laws and regulations,

including the requirements of the Communications Act and the rules, regulations, policies, and procedures of the FCC, or will be made to so comply promptly after Licensee receives written notice of any material deficiency from Broker. Licensee is not now in material violation of any statute, ordinance, rule, regulation, order, or decree of any federal, state, local, or foreign governmental agency, court, or authority having jurisdiction over it or over any part of its operations or assets, which violation would have a material adverse effect on Licensee's ability to perform this Agreement. So long as this Agreement remains in effect, Licensee will maintain the Station's transmission facilities in good operating condition, normal wear and tear excepted,

8. Access to Broker Materials. Licensee, solely for the purpose of ensuring Broker's compliance with the law, FCC rules, and Station policies, shall be entitled to review on a confidential basis any programming material relating to Station broadcasts as it may reasonably request. Broker shall provide Licensee, at Licensee's request, with copies of all correspondence relating to the Station's broadcasts and all complaints received from the public. Broker shall, upon Licensee's reasonable request, advise and consult with Licensee about the programs that Broker intends to broadcast on the Station. The Broker agrees to reimburse the Licensee for any fine, penalty, cost or expense the Licensee incurs as a result of the Broker's programs or programming activities. Any such amounts are in addition to any damages provided in Section 13 of this Agreement.

9. Adjustments. If at any time during the term of this Agreement the Station shall fail for any reason, other than as expressly provided below, to carry Brokered Programming, then the fee payable to Licensee by Broker pursuant to Exhibit A shall be reduced on a pro rata basis.

10. Additional Licensee Obligations. Broker shall co-ordinate with Licensee to ensure the Station's hourly station identification announcements are aired in accord with FCC rules.

11. Force Majeure. Notwithstanding anything contained in this Agreement to the contrary, neither party shall be liable to the other party for a failure to perform any obligation under this Agreement (nor shall any charges or payments be made in respect thereof), if such party shall be prevented from such performance by reason of fires, strikes, labor unrest, embargoes, civil commotion, rationing, or other orders or requirements, acts of civil or military authorities, acts of God, or other contingencies beyond the reasonable control of the parties; and all provisions herein requiring performance within a specified period shall be deemed to have been modified in order to toll or to extend the period in which such performance shall be required, in order to accommodate the period of the pendency of such contingency which shall prevent such performance.

12. Termination. In addition to other remedies, whether pursuant to this Agreement or otherwise, this Agreement may be terminated as set forth below by either Licensee or Broker by written notice to the other party if the party seeking to terminate is not then in material default or breach hereof. Termination shall be permitted upon the occurrence of any of the following:

(a) this Agreement is declared invalid or illegal in whole or substantial part by a ruling, order, or decree of an administrative agency or court of competent jurisdiction and such ruling, order, or decree has become final and no longer subject to further administrative or judicial review and the parties cannot, after using their respective best efforts and negotiating in good faith for a period of sixty (60) days, modify this Agreement to make the invalid or illegal portions comply with such ruling, order, or decree;

(b) the other party is in material breach of its obligations hereunder and has failed to cure such breach within (i) forty-eight (48) hours after Broker's receiving written notice from the Licensee of a breach, provided, however, that if such breach is one that with reasonable diligence cannot be cured within two days, but could be cured within an

additional thirty (30) days, and the breaching party diligently attempts to cure the breach, then the non-breaching party shall not be able to terminate for that breach until such additional thirty (30) day period has elapsed without a cure;

(c) the failure of the Broker to make the payments or provide other consideration as required by Section 2 by the tenth (10th) day following Broker's receipt of written notice from Licensee of such default;

(d) the mutual consent of both parties.

13. Damages.

(a) In the event that termination of this Agreement shall have been due to breach, default, or non-performance on the part of Broker under this Agreement, Licensee shall be entitled to the payment by Broker, as Licensee's sole and exclusive remedy and liquidated damages for such breach, default, or non-performance, and not a penalty, of \$20,000, unless actual damages are shown to be a lesser amount. It is hereby acknowledged by Licensee and Broker that the injury that would be caused to Licensee by such breach, default, or non- performance on the part of Broker would be difficult if not impossible to estimate with any degree of certainty and that the above-specified amount represents Licensee's and Broker's good- faith undertaking to compensate Licensee fully and fairly for such injury and to liquidate Licensee's damages therefor.

(b) In the event that Licensee shall unilaterally terminate this Agreement, or that termination of this Agreement shall have been due to the breach, default, or non-performance on the part of Licensee under this Agreement, Broker shall be entitled to the payment to Broker by Licensee, as Broker's sole and exclusive remedy, of liquidated damages in the amount of \$20,000, unless actual damages are shown to be a lesser amount.

14. Broker's Indemnification; Warranty. To the extent permitted by law, Broker

will indemnify and hold and save Licensee harmless against all liability for libel, slander, illegal competition or trade practice, infringement of trade marks, trade names, or program titles, violation of rights of privacy, and infringement of copyrights and proprietary rights resulting from the programming furnished by Broker. Further, Broker warrants that the broadcasting of the programs will not violate any rights of others, and Broker indemnifies Licensee, the Station, and their respective agents, and employees harmless from any and all claims, damages, liability, FCC forfeitures, costs and expenses, including counsel fees (at trial and on appeal), arising from the production and/or broadcasting of the programs. Licensee reserves the right to refuse to broadcast any and all programs containing matter which is, or in the reasonable opinion of Licensee may be, or which a third party claims to be, violative of any right of theirs or which may constitute a personal attack as the term is and has been defined by the Federal Communications Commission. Broker's obligation to hold Licensee harmless against the liabilities specified above shall survive any termination of this Agreement.

15. Licensee's Indemnification. To the extent permitted by law, Licensee shall indemnify, defend, and hold harmless Broker from and against any and all claims, losses, costs, liabilities, damages, FCC forfeitures, and expenses, including counsel fees, of every kind, nature, and description arising out of (i) any misrepresentation or breach of warranty of Licensee contained in this Agreement; and (ii) any breach of any covenant, agreement, or obligation of Licensee contained in this Agreement.

16. Time of the Essence. The parties agree that time is of the essence with respect to the performance of each and every obligation as set forth herein.

17. Representations. Both Licensee and Broker represent that, as of the date hereof, they are legally qualified, empowered, and able to enter into this Agreement.

18. Modification and Waiver. No modification or waiver of any provision of this

Agreement shall in any event be effected unless the same shall be in writing, and then such waiver and consent shall be effective only in the specific instance and for the purpose for which given.

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

20. Construction. This Agreement shall be construed in accordance with the laws of the State of Michigan, and the obligations of the parties hereto are subject to all federal, state and local laws and regulations now or hereafter in force and to the rules and policies of the FCC and all other government entities or authorities presently or hereafter to be constituted. This Agreement is the product of negotiation and preparation by and between the Parties, and their respective attorneys. Accordingly, the Parties hereto acknowledge and agree that this Agreement shall not be deemed prepared or drafted by one Party or another (or the attorneys for one Party or another) and shall be construed accordingly.

21. Programming Revenues. Except as otherwise provided herein, Broker shall retain all revenues from donor acknowledgments; the sale of advertising or program time on the programs it delivers to the Station; from promotions aired on such programs; or, contributions received as a result of such programs

22. Headings. The headings contained in this Agreement are included for convenience only and no such heading shall in any way alter the meaning of any provision.

23. Counterpart Signatures. This Agreement may be signed in one or more

counterparts, each of which shall be deemed a duplicate original, binding on the parties hereto notwithstanding that the parties are not signatory to the original or the same counterpart.

24. Notices. Any notice required hereunder shall be in writing and shall be delivered via email and by hand or by overnight mail to the appropriate party at the following addresses (or such other address for a party shall be specified by notice pursuant hereto):

If to Licensee: Kalamazoo Public Schools
1200 Howard Street
Kalamazoo, MI 49008
Attn: Gary Start, Interim Superintendent

If to Broker: WMUK 102.1 FM
Western Michigan University
1903 W Michigan Ave
Kalamazoo, MI 49008
Attn: Stephen A. Williams, General Manager

25. Entire Agreement. This Agreement embodies the entire agreement between the parties and there are no other agreements, representations, warranties, or understandings, oral or written, between them with respect to the subject matter hereof. No alteration, modification or change of this Agreement shall be valid unless by like written instrument.

26. Severability. The event that any of the provisions contained in this Agreement is held to be invalid, illegal or unenforceable shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had not been contained herein, unless the deletions of the subject provisions renders the business purpose of this Agreement as void.

27. Licensee Control Verification. Notwithstanding anything to the contrary in this Agreement, Licensee shall have full authority, power and control over the operation of the

Station during the Term. Without limiting the generality of the foregoing, Licensee will:

(1) retain control over the policies, programming and operations of the Station. Nothing contained herein shall prevent Licensee from (a) rejecting or refusing programs which Licensee reasonably believes to be contrary to the public interest, or (b) substituting programs which Licensee reasonably believes to be of greater local or national importance or which are designed to address the problems, needs and interests of the local community. Without limiting the preceding sentence, Licensee reserves the right to (i) refuse to broadcast any Program containing matter which violates any right of any third party, which constitutes a personal attack, or which does not meet the requirements of the rules and published policies of the FCC, (ii) preempt any Program in the event of a local, state, or national emergency, or (iii) delete any commercial announcements that do not comply with the requirements of the FCC's sponsorship identification rules and policies. Broker will immediately serve Licensee with notice and a copy of any letters of complaint it receives concerning any Program for Licensee review and inclusion in the Station's public inspection file. Broker shall cooperate with Licensee to ensure that EAS transmissions are properly performed in accordance with Licensee's instructions. Licensee hereby verifies that it will maintain ultimate control over the Stations' facilities, including, specifically, control over station finances, personnel and programming during the term of this Agreement.

28. Grant of Option. Licensee hereby grants to Broker, and Broker hereby accepts, the exclusive, irrevocable right and option (the "Option") to acquire from Licensee good and marketable title to the Station, including all assets used or useful in the operation of the Station (the "Station Assets"), free and clear of all material liens and liabilities, in accordance with the terms and conditions of this Agreement.

29. Option Period. The Option may be exercised by Broker at any time during the Initial Term (the "Option Period"). The Option shall be exercised by written notice to

Licensee ("Exercise Notice"). Exercising such Option and purchase would be subject to final approval by the Board of Trustees of Western Michigan University and the Board of Education of Kalamazoo Public Schools.

30. Station Purchase. Within ten business days of receipt of the Exercise Notice, Licensee shall execute and deliver to Broker an Asset Purchase Agreement which shall contain the usual terms and conditions typically contained in an asset purchase agreement for the sale of radio stations. The purchase price for the Station shall be \$191,000.00, as outlined in the signed Letter of Intent between the Parties, dated August 20, 2019. Licensee shall also expeditiously prepare the assignor's portion of an assignment application and file the application and any other necessary documentation with the FCC in order to obtain consent to the assignment and sale of the Station. Licensee shall in addition take any and all other action necessary in order to effect the sale of the Station to Broker.

31. Assignment. Neither party may assign this Agreement without the prior written consent of the other party. Nothing in this Agreement expressed or implied is intended or shall be construed to give any rights to any person or entity other than the parties hereto and their successors and permitted assigns.

32. Attorney's Fees. In any action, at law or in equity, arising out of or in connection with this Agreement, the prevailing party shall be entitled to reimbursement of its reasonable costs and expenses incurred thereby, including reasonable attorney's fees.

33. Licensee's Certification Regarding Operations. Licensee hereby certifies, pursuant to Section 73.3555 of the FCC's rules, that Licensee shall retain ultimate control over the Station's programming, personnel and finances.

[Signatures on following page]

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

LICENSEE:

KALAMAZOO PUBLIC SCHOOLS

By: By 2. Stuart
Title: Interim Supt.

BROKER:

THE BOARD OF TRUSTEES OF WESTERN MICHIGAN UNIVERSITY

Michele Cole
2019.11.11
By: M. Cole 20:32:06
-05'00'
Title: WMU Business Services Director

ATTACHMENT A

TIME BROKERAGE AGREEMENT

PAYMENTS / CONSIDERATION

Broker shall pay Licensee on a monthly basis \$375.00.