

## **EXHIBIT J**

### **Local Marketing Agreement (and Agreement of Licensee with Time Brokers)**

## **LOCAL MARKETING AGREEMENT**

### **DEEP SOUTH BROADCASTING COMPANY & BLUEWATER BROADCASTING COMPANY, L.L.C.**

This Local Marketing Agreement (referred to herein as either the "Agreement" or "LMA") dated as of February 27, 2004 (the "Effective Date"), is entered into by and between DEEP SOUTH BROADCASTING COMPANY, an Alabama corporation ("Licensee"), and BLUEWATER BROADCASTING COMPANY, L.L.C., a Florida limited liability company ("Programmer").

WHEREAS, Licensee holds a license from the Federal Communications Commission ("FCC" or "Commission") to operate radio broadcast station WBAM-FM, Montgomery, AL (the "Station"), and

WHEREAS, the principals of Programmer are experienced in the production and broadcast of news, public service and entertainment programming, and

WHEREAS, Licensee wishes to obtain such programming for broadcast by the Station and Programmer wishes to provide such programming to the Station, and

WHEREAS, a Letter Agreement to purchase the assets of Licensee's Station, dated as of February 23, 2004, has been entered into by and between Programmer and Licensee (the "Purchase Agreement"), with all capitalized terms used but not defined herein having the meanings set forth in the Purchase Agreement), and

WHEREAS, pursuant to the terms of a separate agreement among Licensee, Programmer and Montgomery Broadcast Properties ("MBP"), Licensee's obligations under its existing time brokerage agreement with MBP are suspended during the term of this Agreement; and

WHEREAS, Licensee has agreed to make available to Programmer broadcast time on the Station for the presentation of programming pursuant to the terms hereof;

NOW, THEREFORE, for and in consideration of the mutual agreements, representations, warranties and covenants herein contained, and upon the terms and subject to the conditions hereinafter set forth, the parties hereto have agreed and do agree as follows:

#### **1. Facilities.**

(a) Licensee agrees, beginning at 12:01 a.m. on February 27, 2004 (the "Commencement Date"), to make all air time transmission services and production facilities of

and/or for the Licensee's Station, and also the facilities of the Station, available exclusively to Programmer and to broadcast, or cause to be broadcast, on the Station the programming provided by or proposed to be presented by or on behalf of Programmer (the "Programming") which may originate either from Programmer's own studios or from Licensee's studios, all subject to the terms and conditions of this Agreement. The Programming is described in Attachment I hereto.

(b) Programmer shall be entitled to locate any and all personnel as it deems appropriate at the offices and facilities of Licensee, and Licensee shall make available to Programmer all of Licensee's office, studio and other space associated with the Station and all programming, telephone and other equipment and facilities of Licensee required or reasonably requested by Programmer from time to time to enable it and its personnel to perform all the duties, business and activities contemplated by this Agreement.

## **2. Payments.**

(a) Programmer hereby agrees, beginning on and after the Commencement Date and during the term hereof, to reimburse Licensee (an "Expense Reimbursement") for all of Licensee's monthly legitimate and prudent expenses in operating the Station that exceed Dollars (\$) per month, as set forth in Attachment II hereof. Programmer shall receive a payment credit with respect to any Programming that Programmer makes available for broadcast during Brokered Hours (as defined in Section 6), but which is preempted by Licensee. Such credit shall be determined by multiplying the monthly Expense Reimbursement by the ratio of the number of hours (or fractions thereof) of such Programming preempted or not accepted during such calendar month to the total number of Brokered Hours (or fractions thereof) for such calendar month.

(b) In addition to any Expense Reimbursements, Programmer hereby agrees to pay to a Licensee monthly license fee ("Monthly Licensee Fee") as set forth in Attachment III hereto.

(c) Any amounts paid to Licensee prior to the Commencement Date for the sale by Licensee of airtime to be performed or aired on or after the Commencement Date will be paid by Licensee to Programmer on the Commencement Date.

3. **Term.** The term of this Agreement (the "Term") shall commence as of the Commencement Date and shall continue in effect until and shall terminate on the earlier of (i) the closing of the transactions contemplated by the Purchase Agreement, or (ii) the termination of the Purchase Agreement, in accordance with its terms, unless such Term is otherwise sooner terminated as set forth in Section 16 below.

4. **Programming Standards.** Programmer shall furnish or cause to be furnished, and Licensee shall cooperate in all reasonable respects to facilitate the furnishing of, Programming in accordance with the Communications Act of 1934, as amended (the

**"Communications Act"), and the rules and requirements of the FCC, including, without limitation, the Commission's rules on plugola/payola, lotteries, contests, station identification, minimum operating schedule, political programming and political advertising rates; and the Programming shall include announcements and disclosures (including but not limited to station identification announcements, EAS announcements, and sponsorship disclosures) and any other programming necessary for the Stations to comply with the Commission's rules and requirements.**

## **5. Collection of Accounts Receivable**

**(a) Inasmuch as this LMA has been preceded by a time brokerage agreement between Licensee and MBP, Licensee's predecessor programmer, the accounts receivable of the Station are principally if not entirely accounts of MBP. Licensee is not responsible for providing Programmer with sales, trade or programming contracts of MBP, or with payments received on those contracts for time on the Station from and after the Commencement Date. That is a matter of separate contract between Programmer and MBP. Programmer acknowledges receipt of a copy of the Amendment #2 to the LMA between Licensee and MPB, which commits Licensee to air, after commencement of the Term of this LMA with Programmer, certain advertising and other paid programming sold by MBP during the term of its time brokerage agreement with Licensee. Programmer agrees to coordinate and cooperate with Licensee in airing that advertising and paid programming, subject to the terms and conditions stated in the said Amendment #2, and provided Licensee promptly remits to Programmer any payments it may receive from either MBP or its advertisers for such programming.**

**(b) As to any accounts receivable for sales of advertising on that Station that may be owed to Licensee, Licensee hereby assigns to Programmer, for collection only, any such accounts owed as of the close of business on the day before the Commencement Date (such accounts receivable being called "Licensee Receivables"). For a period of ninety (90) days after the Commencement Date (the "Collection Period"), Programmer agrees to use reasonable efforts to collect such Licensee Receivables, as agent for Licensee and on Licensee's behalf, but in accordance with and consistent with usual and normal past collection procedures as have been in effect at the Station (and without being required to use any extraordinary efforts or to incur any out-of-pocket cost or expense or resort to litigation or collection proceedings, or to retain counsel). Licensee agrees that, during the Collection Period, it shall refrain from taking action (whether in connection with collection or otherwise) in respect of the Licensee Receivables. If both Licensee and Programmer are entitled to accounts receivable from the same account debtor, all payments received during the Collection Period shall be first applied to Licensee Receivables from such account debtor until the same are paid in full, unless such account debtor disputes that it is liable to Licensee for such account receivable and Programmer notifies Licensee within 7 days in writing of such dispute. In the event of such disputed account, and after the foregoing notice to Licensee, Programmer shall be entitled to apply the payments made by the account debtor to Programmer's account receivable. Programmer shall have the right and**

**authority to endorse, without recourse, with the name of Licensee, any checks received in respect of any Licensee Receivables.**

**(c) As soon as practicable, but in no event later than the 10<sup>th</sup> day of each calendar month following the end of the first full month after the Commencement Date (or the next business day thereafter if the 10<sup>th</sup> is not a business day), Programmer shall furnish Licensee with a written accounting of the Licensee Receivables collected by Programmer on Licensee's behalf after the Commencement Date and during the preceding calendar month.**

**On such day, Programmer shall remit to Licensee the net amount of all Licensee Receivables collected on Licensee's behalf by Programmer during such calendar month, after deducting therefrom any applicable agency or other sales commissions paid by Programmer as to such receivables.**

**(d) Upon the earlier of (i) termination of this Agreement, other than due to consummation of the Purchase Agreement, or (ii) 90 days after the Commencement Date, Programmer will turn back to Licensee all of the Licensee Receivables of the Station owing to Licensee that have not yet been collected (including all records and documents of the Station relating to such uncollected accounts), and Programmer will thereafter have no further responsibility with respect to the collection of such Licensee Receivables; provided, however, that all funds subsequently received by Programmer that can be, with commercially reasonable efforts, specifically identified, whether by accompanying invoice or otherwise, as payment on any Licensee Receivable shall be promptly upon such identification paid to Licensee. Programmer shall not have the right to compromise, settle or adjust the amount of any Licensee Receivable without Licensee's prior written consent, or to withhold any proceeds of any Licensee Receivable or to retain any uncollected Licensee Receivables after the expiration date of the Collection Period for any reason whatsoever.**

**(e) Within twenty (20) business days after Programmer turns back the Licensee Receivables to Licensee pursuant to this Section, Programmer will furnish Licensee with a final and up-to-date accounting of the Licensee Receivables. Licensee acknowledges and agrees that Programmer is acting as collection agent hereunder for the benefit of Licensee (but subject to the limitations set forth herein) and that Programmer has accepted such responsibility for the accommodation of Licensee. Licensee shall remain responsible for all agencies, sales and other commissions and related payroll and other taxes and withholdings associated with or arising out of any of the Licensee Receivables.**

## **6. Covenants.**

(a) Licensee hereby covenants that the Station shall operate in accordance with the authorizations issued to Licensee by the Commission. Throughout the term of this Agreement, Licensee shall make the Station available to Programmer for broadcast of Programming with substantially its present authorized facilities during Brokered Hours, subject to Licensee's rights to preempt Programming pursuant to Sections 11 and 12 hereof. Programmer shall make available Programming for all Brokered Hours. "Brokered Hours" shall mean 168 hours per week, less up to ten hours in any calendar month as Licensee may deem necessary for maintenance of the facilities of the Station. Licensee shall use its best efforts to schedule downtime for maintenance on Sunday mornings between the hours of 12 a.m. and 6:00 a.m. and to provide Programmer with at least 48 hours prior notice of downtime for maintenance scheduled for any other hours.

(b) To facilitate the production of Programming for the Station, and in furtherance of Programmer's rights under this Agreement, Licensee shall with the consent of MBP permit Programmer and its employees to utilize substantially all space, equipment and furnishings at the Station's studios and offices currently used or held for use in the operation of the Station and shall permit Programmer to have continual access to all advertising files and related documentation, and all such files and documentation shall be maintained at the Station. Licensee shall maintain the studios of and transmission facilities for the Station and shall permit the same to serve as programming origination facilities for Programmer, and the same shall be adequate to maintain the operations of the Station, and to house the Station's general manager and such other employees of Licensee who are necessary for the operation of the Station in accordance with the FCC's rules and requirements, including, without limitation, the FCC's main studio rule. During the Term, Licensee shall with the consent of MBP grant Programmer access to the studio and other space, equipment and facilities referred to herein 24 hours a day every day of the year. Licensee shall cooperate with Programmer, at Programmer's expense, in making such arrangements as Programmer shall reasonably request to deliver Programming from any remote location to the Station's respective transmitter sites.

(c) Licensee shall maintain all equipment necessary for broadcasting by the Station in a condition consistent with Licensee's past operating practices and in compliance in all material respects with the applicable rules, regulations and technical standards of the Commission. Any capital expenditures reasonably required to maintain the current technical quality of the Station's signal shall be made in a timely fashion at the expense and in the sole discretion of Licensee. If the Station suffers any loss, reduction or damage of any nature to its signal or any of its transmission facilities that results in the interruption or reduction of service of the Station or the inability of the Station to operate with maximum authorized facilities and power, Licensee shall use its best efforts to effect such repairs as are necessary to restore full-time, full power operation of the Station with its maximum authorized facilities as soon as practicable.

(d) Programmer shall conduct itself, and shall cause its employees and agents to conduct themselves, in the course of their respective activities and operations under this Agreement (including their use of the Station's space, equipment, files and furnishings) with due care, in the ordinary course of business, and in a manner consistent with the normal and prudent operation of a commercial broadcast radio station of similar size and format. Programmer will adhere to all rules, regulations, and policies of the Commission, and all state and federal laws and regulations and take no action or fail to take any action that would cause the Station to be in violation of any of the foregoing rules, regulations, policies, laws or regulations.

(e) The parties hereto acknowledge and agree that nothing herein shall be deemed to constitute a lease of the premises housing the space, equipment and furnishings of the Station.

7. **Handling of Mail.** Programmer shall be responsible for receiving and handling all mail, cables or telegrams directed to the Station and shall promptly furnish to Licensee all such communications (or, as appropriate, copies thereof) that are intended for Licensee or relate to Licensee's responsibilities under this Agreement or as a broadcast licensee of the Commission (including, but not limited to, copies of all correspondence received from members of the public with respect to the programming or operations of the Station), and shall furnish to Licensee, unopened, any mail, cables or telegrams addressed to Licensee. Licensee shall furnish promptly to Programmer all mail, cables, or telegrams (or, as appropriate, copies thereof) received by Licensee that are intended for Programmer or relate to Programmer's responsibilities under this Agreement, and shall furnish to Programmer, unopened, any mail, cables or telegrams addressed to Programmer or received at the Station and not addressed to Licensee. Each party shall promptly advise the other of any inquiry or complaint other than by mail, cable or telegram, that is related to the operation of the Station or programming on the Station. Licensee shall be solely responsible for maintaining the Station's public file.

8. **Responsibility for Employees and Expenses.**

(a) **Licensee's Responsibilities.** Licensee shall provide and be responsible for the Station's personnel necessary for the broadcast transmission of Programmer's Programming and the exercise of the Licensee's rights of oversight and control of the Station's operations, which shall consist of two persons who shall be a full-time manager and a full-time non-management staff person, together with such additional personnel as shall be necessary for such foregoing purposes (the "Licensee Employees"). Subject to **Attachment II**, Licensee shall be responsible in the first instance for the costs and expenses related to the operation of the Station and the broadcasting of the Programming, excluding any costs related to the production of Programmer's Programming or as otherwise provided in Section 8(b). Personnel utilized by Licensee in the performance of its obligations under this Agreement shall at all times remain in the employ of Licensee and subject to Licensee's control; and Licensee shall be responsible for all employee benefits and

compensation and employment taxes with respect to such personnel. Licensee will be responsible in the first instance for payment of all of the Station's expenses necessary to fulfill Licensee's Commission obligations and to transmit the Programming, and will be responsible for payment of the salaries, taxes, insurance and related costs for Licensee's personnel in respect thereof. Without limiting the generality of the foregoing, Licensee will be responsible for all costs associated with the maintenance of the Station's towers, transmitters and antenna, electrical power at the Station's studio and from the studio to the transmitter site, lighting, heating and cooling at the studio and transmitter sites, maintenance of the Station's local public records file, rent, and all other expenses associated with maintaining the Station's studio.

(b) **Programmer's Responsibilities.** Subject to Attachment II, as of the Commencement Date, Programmer shall employ and be responsible for the salaries, taxes, insurance, commissions and other sales costs, and related costs for any present employees of Licensee who are employed by Programmer during the Term ("Transferred Employees" as defined below) and its other personnel used in the production of the Programming (including salespeople, traffic personnel, board operators and programming staff). During the term of this Agreement, personnel utilized by Programmer in the performance of its obligations under this Agreement shall at all times remain in the employ of Programmer and subject to Programmer's control, subject to Licensee's ultimate oversight and control which shall be exercised within the terms of this Agreement; and Programmer shall be responsible for all employee benefits and compensation and employment taxes with respect to its employees. Provided, however, notwithstanding the foregoing, upon seven (7) days prior written notice to Licensee, Programmer shall have the authority to terminate a Transferred Employee. For purposes of this Agreement, "Transferred Employee" means any present employee of Licensee at the Station who is employed by Programmer beginning with the Commencement Date. With respect to performance of any contract of Licensee assigned to and assumed by Programmer during the Term, Programmer hereby agrees to discharge and perform all obligations and duties assigned to it by Licensee under such assumed contract and other obligations identified by Licensee to Programmer, and at Licensee's request to pay directly the costs and expenses in connection therewith, which shall be included in the expense reimbursement pursuant to Attachment II hereto. In all its activities and actions, and presentation of Programming, Programmer shall comply with the Communications Act, the rules, regulations and policies of the FCC, and applicable state and federal laws.

9. **Programmer's Insurance.** During the Term, Programmer shall either (a) be included as an additional insured under the Licensee's existing broadcast liability, workers compensation, and commercial general liability insurance policies, or (b) obtain comparable coverage from other established insurance companies reasonably acceptable to Licensee. Programmer shall deliver certificates of insurance periodically to Licensee evidencing that such insurance remains in effect and such policies shall name Licensee as an additional insured.



**10. Suspension of Existing LMA.** A separate agreement among Licensee, Programmer and MPB provides for suspension of the existing time brokerage agreement by Licensee with MPB during the term of this Agreement.

**11. Operation of the Stations.**

(a) **General.** Notwithstanding anything to the contrary in this Agreement, Licensee shall have authority and power over the operation of the Station during the term of this Agreement. Licensee shall retain control, said control to be reasonably exercised, over the policies, programming and operations of the Station, including, without limitation, the right to decide in the good faith exercise of its sole discretion whether to accept or reject any Programming or advertisements, the right to preempt any Programming in order to broadcast a program deemed by Licensee to be of greater national, regional, or local interest, and the right to take any other actions for compliance with the laws of the United States or the State of Alabama or the rules, regulations, and policies of the Commission. Licensee shall at all times be responsible for meeting all of the Commission's requirements, including those with respect to public service programming, maintaining the political and public inspection files, equipment maintenance logs of the Station, and preparation of programs/issues lists. Licensee shall at all times be responsible for compliance with the Commission's main studio rules and policies. Programmer shall, upon request by Licensee, provide Licensee with information with respect to such of Programmer's programs as are responsive to public needs and interests so as to assist Licensee in the preparation of required programming reports, and will provide upon request other information to assist Licensee's preparation of other records, reports and logs required by the Commission or other local, state or federal governmental agencies.

(b) **Political Advertising.** Licensee will oversee and take ultimate responsibility with respect to the provision of equal opportunities, lowest unit charge, and reasonable access to political candidates, and compliance with the political broadcast rules of the FCC. Programmer shall supply information to assist Licensee in complying with the lowest unit charge requirements of federal law and shall provide all records and information required by the FCC to be placed in the local public inspection file of the Station pertaining to the broadcast of political programming and advertisements within the Programming, in accordance with the provisions of Sections 73.1943 and 73.3526 of the FCC's rules. To the extent necessary, Programmer shall release advertising availabilities to Licensee to permit it to comply with the political broadcast rules of the FCC including, but not limited to, Section 315 of the Communications Act, as amended; provided, however, that revenues received by Licensee as a result of such a release of advertising time shall be deemed irrevocably assigned to Programmer and shall be promptly remitted to Programmer. Programmer will promptly advise Licensee of any inquiry or complaint about the Station's political advertising compliance and will provide Licensee with all documents and other information in Programmer's possession that may be necessary or appropriate for the preparation of a response.

(c) **Responsive Programming.** Programmer and Licensee mutually acknowledge their interest in ensuring that the Station serves the needs and interests of the residents of the Station's community of license and surrounding service area and agree to cooperate in doing so. Licensee may request, and Programmer shall provide, information concerning Programmer's Programming that is responsive to community issues so as to assist Licensee in the satisfaction of its public service programming obligations. Programmer and Licensee shall meet at least once per month at a mutually agreeable time and place to discuss station programming and operation under this Agreement, including rejection or preemption of programming by Licensee, needs and interests of the public in Montgomery, Alabama, and surrounding area as perceived by Licensee, and the production of programming by Programmer designed to address those needs and interests, the coordination of the Station's hourly station identification announcements, and any other matters related to programming and the ongoing operation of the Station.

12. **Special Events.** Licensee reserves the right to preempt any of the broadcasts of Programmer's Programming and to use such preempted time for broadcast of special events deemed by Licensee in good faith to be of importance to its community of license. In all such cases, Licensee shall use its diligent efforts to give Programmer reasonable advance notice of its intention to preempt Programmer's Programming; provided however, that any revenues received as a result of such preemption shall be deemed irrevocably assigned to and be promptly remitted to Programmer.

13. **Force Majeure.** If normal broadcast transmissions of the Station are interrupted, interfered with or in any way impaired, Licensee will share with Programmer, upon request, Licensee's information as to the known identity of the problem and measures being taken to correct it; provided, however, that if operation of the Station is not resumed at full licensed power and antenna height within five (5) days after such event or if more than five (5) such events occur within any thirty (30) day period, or if the Station shall be off the air for more than twelve (12) consecutive hours, then Programmer may at its own expense after written notice to Licensee make such repairs or capital improvements as are required to return the Station to full licensed power and antenna height. Neither Licensee nor Programmer shall be considered as in default under this Agreement if any cause for the impairment or off-air status of the Station is due to weather related causes, force majeure or any other cause beyond the control of such party;

14. **Right to Use the Programming.** During the Term hereof, the right to use the Programming and to authorize its use in any manner and in any media whatsoever shall be, and remain, vested in Programmer.

**15. Certain Governmental Action.**

(a) In the event that a federal, state or local governmental authority (i) orders the termination of this Agreement and/or orders the curtailment, in any manner material to the relationship between the parties hereto, of the provision of Programming by Programmer hereunder, and/or (ii) determines that other similar local marketing agreements, in whole or in part, are contrary to public or agency policy, at its option Programmer may, at its expense, seek administrative or judicial appeal of or relief from such order(s) (in which event Licensee shall cooperate with Programmer in such proceedings). In the case of clause (i) of the preceding sentence, Programmer may alternatively notify Licensee that it will terminate this Agreement pursuant to this Section 15 at such time, consistent with any requirement of the governmental order, as will facilitate a smooth and orderly transition to full Station programming by Licensee. If any complaint or petition is filed with the Commission with respect to the operation of the Stations or with respect to the Programming, or in the event the Commission designates the renewal application of the Station for a hearing as a consequence of this Agreement or for any other reason, Programmer shall cooperate and comply with any reasonable request of Licensee to assemble and provide to the Commission information relating to Programmer's performance under this Agreement.

(b) If this Agreement is challenged at or by the FCC or at or by the U.S. Department of Justice or the Federal Trade Commission, whether or not in connection with a license renewal application of the Station, Programmer and Licensee, through their respective counsel, shall jointly defend this Agreement and the parties' performance thereunder throughout all such proceedings. If portions of this Agreement do not receive the approval of the FCC staff, to the extent that such approval may be required, then the parties shall use their best efforts to reform this Agreement in such a manner as to maintain the economic benefit anticipated by each party or, at the option and expense of Programmer, seek reversal of the staff decision and approval from the FCC on appeal.

**16. Termination.** This Agreement may be terminated under the following circumstances:

(a) upon consummation of the Purchase Agreement or otherwise by mutual consent of the parties in writing;

(b) if the FCC license for the Station should expire without being renewed or extended by operation of law during the pendency of renewal proceedings, in which case the termination date shall be the expiration of the FCC license;

(c) by Programmer, by giving written notice of termination to Licensee, if (A) Programmer is not then in material breach hereof, and (B) Licensee is in breach of its obligations hereunder and has failed to cure such breach within forty-five (45) days after receiving written notice of such breach from Programmer;

(d) by Licensee, by giving written notice of termination to Programmer, if (A) Licensee is not then in material breach under this Agreement, and (B) Programmer is in breach of its obligations hereunder and has failed to cure such breach within forty-five (45) days after receiving written notice of such breach from Licensee, unless the breach is such as to prevent Licensee from meeting its legal obligations as a licensee of the FCC, in which case the forty-five (45) day opportunity for cure shall not apply;

(e) by Programmer or Licensee, provided the terminating party has complied with the provisions of Section 15 hereof, by giving written notice of termination to the other party, if: (i) this Agreement is declared invalid or illegal in whole or substantial part by an order or decree of an administrative agency or court of competent jurisdiction and such order or decree has become final and no longer subject to further administrative or judicial review, or (ii) there has been a material change in FCC rules, policies, or precedent that would cause this Agreement to be in violation thereof and such change is in effect and has not been stayed pending an appeal or further administrative review; or

(f) by either party upon termination of the Purchase Agreement.

**17. Post-Termination Cooperation.** In the event of a termination of this Agreement for any reason other than under Section 16(b) (loss of license), Licensee shall cooperate with Programmer to enable Programmer to fulfill all advertising or other programming contracts then outstanding and Programmer shall cooperate with Licensee to transition the operations of the Stations back to Licensee. In such event of such termination, Licensee hereby agrees to collect on behalf of Programmer the accounts receivable generated during the Term on substantially the same terms and conditions as Section 5 hereof. Licensee shall have access to and the right at its own expense to make copies of Station records maintained by Programmer. This right shall be limited to access either on or off the business premises of Programmer during normal business hours. It shall also be limited to records of Programmer's billing, receipts and expenses that relate wholly or in part to the Station. If the records relate only in part to the Station, access shall include any records maintained by Programmer that identify what part of the billing, receipts and expenses relate to the Station.

**18. Certifications.** Pursuant to Note 2(j)(3) to Section 73.3555 of the FCC's rules, Licensee, by the signature of its authorized representative to this Agreement, certifies that it maintains and will continue to maintain ultimate control over the Station's facilities, including specifically ultimate control over the Station's finances, personnel and programming, as provided herein. Programmer, by the signature of its authorized representative to this Agreement, certifies that the arrangement complies with the provisions of ¶¶(a), (c) and (d) of §73.3555 of the Commission's Rules, 47 C.F.R. §73.3555.

**19. Public Announcements.** The Programmer shall not make any public announcement or issue any press releases with respect to the existence of, the conditions

and terms of, and any other matter in connection with this Agreement without the prior consent of Licensee to the content and language of such announcement or release.

20. **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 signed by the party adversely affected by the waiver or modification, and then such shall be effective only in the specific instance and for the purpose for which given.

21. **No Waiver; Remedies Cumulative.** No failure or delay on the part of Licensee or Programmer 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 of steps to enforce such a right or power. The rights and remedies of Licensee and Programmer herein provided are cumulative and are not exclusive of any right or remedies that it may otherwise have.

22. **Construction.** This Agreement shall be construed and enforced in accordance with the laws of the State of Alabama, without regard to principles of conflicts of laws, 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 Commission and all other government bodies or authorities presently or hereafter to be constituted.

23. **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.

24. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. No assignment may be made by the Programmer without the prior written consent of the Licensee, which may be granted or withheld by Licensee in its sole discretion.

25. **Counterpart Signatures.** This Agreement may be executed in multiple copies, each of which shall constitute an original.

26. **Notices.** All notices, demands, and requests required or permitted to be given under the provisions of this Agreement shall be in writing and shall be deemed to have been duly delivered and received (a) on the date of personal delivery or (b) on the date of receipt (as shown on the return receipt) if mailed by registered or certified mail, postage prepaid and return receipt requested, or if sent by FedEx or similar courier service, with all charges prepaid. Facsimile copies shall not be considered as acceptable under this paragraph for communication of notices, demands or requests. All such notices, demands, and requests shall be addressed as follows:

***If to Programmer:***

**Mr. Richard Pestrighelli  
Bluewater Broadcasting, LLC  
6300 NE 1<sup>st</sup> Avenue, Suite 202  
Fort Lauderdale, FL 33334  
Facsimile: (954) 434-5408**

***with a copy to (which shall not constitute notice):***

**Matthew L. Leibowitz, Esq.  
Leibowitz & Associates, PA  
One SE Third Avenue Suite 1450  
Miami, FL 33131  
Facsimile: (954) 530-9417**

***If to Licensee:***

**Mr. William J. Brennan, Jr.  
Deep South Broadcasting Company  
1571 Meriwether Circle  
Montgomery, AL 36117-3424**

*with a copies to (which shall not constitute notice):*

Sidney White Rhyne, Esq.  
3250 Arcadia Place, N.W.  
Washington, DC 20015-2330  
Facsimile: (202) 244-4279

and

Henry H. Hutchinson, Esq.  
Capell & Howard, P.C.  
150 South Perry Street  
Montgomery, AL 36104-4227  
Post Office Box 2069  
Montgomery, AL 36102-2069  
Facsimile: (334) 241-8270

or to any other or additional persons and addresses as the parties may from time to time designate in a writing delivered in accordance with this Section 26. Nothing in this Section shall preclude the delivery of notices by appropriate means other than those described above.

27. **Representations, Warranties, and Indemnification:** Representations and warranties of the parties to this Agreement are contained in Attachment IV, and provisions for indemnification are contained in Attachment V.


28. **Entire Agreement.** This Agreement, the Purchase Agreement, the Agreement of Assignment and Assumption of Joint Venture Partnership Interest, and the Agreement of Licensee with Time Brokers, all of even date herewith, embody 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 alterations, modification or change of this Agreement shall be valid unless by like written instruments.

29. **Severability.** In the event that any provisions contained in this Agreement are held to be invalid, illegal or unenforceable it 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, subject to Programmer's right to terminate pursuant to Section 16 hereof.

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

Licensee

**DEEP SOUTH BROADCASTING COMPANY,**  
an Alabama corporation

By:   
William J. Brennan, Jr., President

**Programmer**

**BLUEWATER BROADCASTING, LLC,**  
a Florida limited liability company

By:   
Richard Pestrichelli, Manager



## **LOCAL MARKETING AGREEMENT**

### **ATTACHMENT I**

**Programmer's Programming will be an entertainment format, and include news, public affairs, informational programming as well as commercial matter and public service announcements. Programmer agrees that it will not change or alter the basic formats currently broadcast on the Station without the prior written consent of Licensee, which consent shall not be unreasonably withheld. Commercial matter may include program or spot announcement forms.**

## **ATTACHMENT II**

**Programmer shall reimburse to Licensee the actual costs incurred by Licensee that exceed                      Dollars (\$                      ) per month, with respect to the following expenses attributable to the Term of this Agreement incurred solely in operating, maintaining and insuring the Station and its equipment, whether actually paid or accrued but unpaid, in each case except as otherwise provided below or elsewhere in this Agreement: electric power and other utility charges, tower site rental costs for its main transmitter facility, any studio rents, telephone line charges, property tax on equipment, equipment repair, and replacements where necessary, property taxes with regard to the Station property, building and tower maintenance, documented costs of engineering consultants and legal counsel, capital expenditures associated with and incurred by Licensee with regard to the Station, casualty and liability insurance premiums with respect to insurance policies currently maintained with respect to the Stations in an amount equal to the current premiums being currently paid by the Station therefor, music licensee fees (such as ASCAP, BMI and SESAC), production music license fees and software license fees, pro rata FCC annual regulatory fees, salaries and benefits of Licensee's employees at the Station described in Section 8(a), including required payroll taxes and health insurance, and programming and production costs incurred by Licensee in respect of any Programming to be aired after the date hereof and that first become due and payable during the term of this Agreement ("Operating Expenses").**

**On or before the tenth (10<sup>th</sup>) business day of each month, Licensee will provide Programmer a list of the actual expenses incurred or accrued during the preceding month, or prior thereto but after the Commencement Date of this Agreement if not previously submitted to Programmer for reimbursement, together with copies of the invoices or other backup information as may exist, at which time Programmer shall pay to Licensee such amounts within five (5) business days of receipt of the list.**

**Programmer will be responsible to reimburse Licensee for Operating Expenses only relating to the portion of any month during which the Term of this Agreement has been in effect.**

### **ATTACHMENT III**

**Programmer shall pay a Monthly License Fee in the amount of  
Dollars (\$ ) for the Term of the Agreement, due and payable on and to  
be delivered on the first business day of each month. For the first month, as the Com-  
mencement Date falls on February 24, 2004, the payment will be prorated for days in  
February, 2004. Likewise for the last month, if termination shall not fall at the end of the  
month, the payment will be prorated for days of the Term within the month in which the  
date of termination falls.**

## ATTACHMENT IV

1. **Indemnification by Programmer.** Programmer shall indemnify and hold Licensee harmless from and against any and all claims, losses, costs, liabilities, damages, FCC license revocation or non-renewal, forfeitures and expenses (including reasonable legal fees and other expenses incidental thereto) of every kind, nature and description arising out of the programming produced or otherwise obtained by Programmer and broadcast by the Station under this Agreement, or arising out of sales by Programmer of time on the Station, or any breach of or default under this Agreement by Programmer, to the extent permitted by law.

2. **Indemnification by Licensee.** Licensee shall indemnify and hold Programmer harmless from and against any and all claims, losses, costs, liabilities, damages, FCC forfeitures and expenses (including reasonable legal fees and other expenses incidental thereto) of every kind, nature and description, arising out of any programming produced or otherwise obtained by Licensee and broadcast by the Station, to the extent permitted by law.

3. **Notice of Claims.** Neither Licensee nor Programmer shall be entitled to indemnification pursuant to this section against claims made by third parties (including FCC forfeitures) unless such claim for indemnification is asserted in writing, and delivered to the other party within ten (10) business days after the party seeking indemnification has received documentation from the third party asserting such claim, loss, cost, liability, damages, FCC forfeiture or other expense for which indemnification is sought.

4. **Defense of Claims.** Upon receipt of the notice specified by ¶3, the party receiving such notice may assume the defense of such claim and may defend, compromise, settle or otherwise resolve such matter if:

A. **Ten Business Days.** Notice of such assumption is provided to the other party within ten (10) business days after receipt of the notice specified in ¶3;

B. **Notice of Duty.** The duty to indemnify the other party is asserted in the notice of assumption; and

C. **No Material Prejudice.** Such assumption will not materially prejudice the other party.

5. **Survival of Right.** The right of each party to obtain indemnification from the other party shall survive the expiration or termination of this Agreement for a period of one (1) year or such additional time as is necessary to determine finally any claim for indemnification where notice of such claim was received before the end of the period of a year.

## ATTACHMENT V

1. **Representations and Warranties of Licensee.** Licensee represents and warrants to Programmer as follows:

A. **Existing/Foreseeable Obligations.** The execution, delivery and performance of this Agreement and the transactions contemplated hereby do not and will not violate any provisions of, conflict with, result in a breach of, or constitute a default under any contract, agreement or other obligation to which Licensee is a party or by which Licensee is or may be bound.

B. **Compliance with Laws.** The Station transmitter facilities are capable of being operated, and Licensee will operate the Station, in material conformity with all applicable local, state, and federal laws, rules, and regulations, including, without limitation, the Communications Act of 1934, as amended, and the rules and regulations of the FCC.

C. **Transmitter Maintenance/Operation.** The transmitting facilities of the Station are currently maintained, and shall continue to be maintained, in accordance with good engineering practice and all applicable FCC rules and regulations, though Licensee does not undertake to continue throughout the term of this Agreement to maintain its presently licensed auxiliary antenna facility or equipment. The Station complies and will continue to comply with all engineering requirements set forth in its FCC license. The Station is capable of transmitting, and will be operated in such a fashion as to transmit (except at such time where reduction of power is required for routine or emergency maintenance activities), at the Station's maximum authorized power. In the event of an Act of God preventing such operation, Licensee agrees to use his best efforts to restore operations quickly.

D. **Station Value.** Licensee will, throughout the term of this Agreement, do nothing consciously or maliciously to impair the value of the Station.

2. **Representations and Warranties of Programmer.** Programmer represents and warrants to Licensee as follows:

A. **Studio Space.** Programmer has obtained from MBP, by binding written contract, the right to use the existing studio space at 4101-A Wall Street, Montgomery, AL 36106-3656,, with the facilities and equipment owned by MBP at that site, as the primary site from which to fulfill its obligations under this Agreement to program the Station from and after the Commencement Date.

B. **Existing/Foreseeable Obligations.** The execution, delivery and performance of this Agreement and the transactions contemplated hereby do not and will not violate any provision of, conflict with, result in a breach of, or constitute a default under any contract, agreement or other obligation to which Programmer is a party or by which Programmer is or may be bound.

**C. Compliance with Copyright Act.** Programmer will have full authority to broadcast its programming, and will not broadcast any material in violation of the Copyright Act. All music supplied by Programmer will be: (a) licensed by ASCAP, BMI or SESAC; (b) in the public domain; or (c) cleared at the source by Programmer.

**D. Compliance with State Registration.** Programmer has registered to do business in the State of Alabama and is otherwise qualified under state law to perform its obligations under this Agreement.

**AGREEMENT OF LICENSEE WITH  
TIME BROKERS**

This Agreement is made by and among Deep South Broadcasting Company ("DSB"), licensee of Radio Station WBAM-FM, Montgomery, AL (the "DSB Station"), Montgomery Broadcast Properties, Ltd. ("MBP"), and Bluewater Broadcasting Company, LLC ("BBL").

MBP and BBL have entered into a Letter Agreement, dated February 23, 2004 (the "MBP Purchase Agreement"), for the sale by MBP to BBL of Radio Stations WACV (AM), WQKS-FM and WJWZ(FM) (the "MBP Stations"). DSB and BBL have entered into a Letter Agreement, dated February 23, 2004 (the "DSB Purchase Agreement"), for the sale by DSB to BBL of the DSB Station.

DSB, MBP and BBL have entered into time brokerage agreements/local marketing agreements (LMAs) for the DSB Station and the MBP Stations. Under those agreements, the existing LMA between DSB and MBP, dated September 17, 1994, as previously amended on September 29, 2001, and as further amended concurrently with the date hereof ("LMA1"), is to be suspended at 12:01 a.m. February 24, 2004, and replaced at that time with a new LMA between DSB and BBL for the DSB Station ("LMA3").

BBL agrees, upon the commencement of LMA3, to cooperate with DSB in airing on the DSB Station advertisements and other paid programming sold by MBP under LMA1 but which were not yet aired prior to the com-

mencement of LMA3. BBL will air such programming on the dates and at the times for which the time was sold by MBP, unless exceptional circumstances require that adjustments be made, in which case the programming will be aired as nearly as possible in accord with the terms of sale and concomitant adjustments will be made in costs to advertisers. Collection procedures for such programming are prescribed in an LMA between MBP and BBL for the MBP Stations ("LMA2").

Notwithstanding provisions in other agreements by and between the parties for later expiration or termination of LMA3, LMA3 will be terminated and replaced by LMA1 at the earliest of any of the following events:

1. Written notice by BBL to MBP with a copy to DSB of termination of the MBP Purchase Agreement, or by MBP to BBL with a copy to DSB of termination of the MBP Purchase Agreement, if the Federal Communications Commission denies an application for its consent to assignment of the licenses of the MBP Stations to BBL under the terms of the MBP Purchase Agreement (the "FCC Denial"); or

2. Receipt by DSB of a copy of a written notice by either MBP or BBL addressed to the other party exercising a right of termination of the MBP Purchase Agreement under any provision of that agreement giving them the right to terminate; or



3. Receipt by MBP of a copy of a written notice by either DSB or BBL addressed to the other party exercising a right of termination of the DSB Purchase Agreement under any provision of that agreement giving them the right to terminate.

Notices and copies of notices under items 1-3 above shall be sent by the notifying party to the receiving party addressed to both principal and attorney for the receiving party as provided in the DSB Purchase Agreement as to BBL and DSB, and the MBP Purchase Agreement as to BBL and MBP, between the notifying party and the receiving party.

Unless otherwise mutually agreed to in writing between the parties, the effective date of termination of LMA3 and reinstatement of LMA1 in the event of any of the notices in 1-3 of this paragraph shall be the earlier of: the effective date of termination of DSB Purchase Agreement under the terms of the DSB Purchase Agreement, for a notice as between BBL and DSB, and the effective date of termination of the MBP Purchase Agreement, as set forth in the MBP Purchase Agreement, for a notice between BBL and MBP; provided that upon FCC Denial, the effective date of termination date may not be later than finality of the FCC Order.

The rights of termination provided in this Agreement are in addition to and not in substitution for

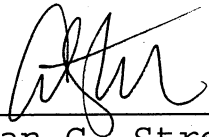
other contractual rights of termination provided in agreements of the parties.

If LMA1 is reinstated as provided in this Agreement, then from and after the date of reinstatement and except as may be modified by mutual agreement of the two parties to LMA1, each of them shall again have all rights and obligations provided in LMA1.

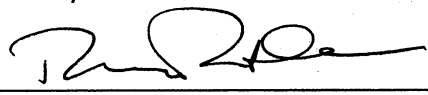
DSB, BBL and MBP will cooperate with each other in performing the obligations undertaken herein.

MONTGOMERY BROADCAST  
PROPERTIES, LTD.

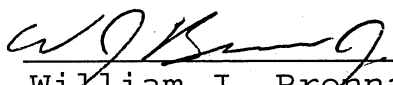
By: STROH COMMUNICATIONS  
CORPORATION, General  
Partner

By:   
Allan G. Stroh  
President

BLUEWATER BROADCASTING  
COMPANY, LLC

By:   
Richard Pestrichelli  
Manager

DEEP SOUTH BROADCASTING  
COMPANY

By:   
William J. Brennan  
President