

## **LOCAL MARKETING AGREEMENT**

THIS LOCAL MARKETING AGREEMENT is entered into as of the \_\_\_\_ day of March, 2008 (this "Agreement"), by and between SAND HILL MEDIA GROUP, LLC, an Idaho limited liability company ("Programmer") and COLLEGE CREEK MEDIA, LLC, a limited liability company ("Licensee" or "Permittee").

### **RECITALS:**

WHEREAS, Licensee holds the FCC construction permit to construct and operate new broadcast station KQPI(FM), on Channel 258 (99.5 MHz) at Aberdeen, Idaho, FCC Facility ID Number 164125 (the "Station") pursuant to authorizations issued by the Federal Communications Commission (the "FCC"); and

WHEREAS, Programmer desires to purchase time on the Station for the broadcast of programming on the Station and for the sale of advertising and program time included in that programming, effective upon the commencement of operations of the Station.

WHEREAS, Programmer and Licensee are parties to an Asset Purchase Agreement ("Agreement") whereby Programmer shall purchase the Assets including the license/permit of KQPI, Aberdeen, Idaho.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Time Sale. Subject to the provisions of this Agreement and to applicable rules, regulations and policies of the FCC, during the Term, Licensee agrees to make the Station broadcasting transmission facilities available to Programmer for broadcast of Programmer's programs on the Station. Programmer will have the right to broadcast on the Station up to twenty-four (24) hours of programming each day during the Term (as defined in Section 2 below), except as otherwise provided in this Agreement. Licensee specifically reserves for its own use up to two (2) hours per week of programming time (the "Reserved Time") during which it may broadcast programming of its choice. The Reserved Time shall be at a mutually agreed time between the hours of 6:00 a.m. and 12:00 midnight on Saturday or Sunday, in segments of no less than one (1) hour.

2. Term. The term of this Agreement shall begin on the date that the Station commences Program Tests as defined by the FCC (the "Effective Date") and shall continue for a period of eighteen months thereafter, unless earlier terminated in accordance with the provisions hereof (the "Term") or Paragraph 4 of the Asset Purchase Agreement of even date. At the option of Programmer, the Term of the Agreement may be extended if the consummation of the sale of the Station to Programmer as set out in an Asset Purchase Agreement between the parties has not occurred, and that agreement is still in effect. If Programmer chooses to extend the Term pursuant to this provision, it may continue to program the Station under the terms of this

Agreement for as long as it so elects, until such time as the Asset Purchase Agreement is terminated or sale of the station has consummated.

3. Consideration. As consideration for the airtime made available hereunder during the Term, Programmer shall pay to Licensee on the Effective Date and on the 1st day of each month thereafter, in cash or by check, the sum set forth in Exhibit A hereto.

4. Licensee's Responsibility for Expenses. Licensee shall be solely responsible for payment of the direct and indirect operating costs incurred in the operation of the Station, which costs shall include but not limited to: (a) salaries, payroll taxes, insurance and related costs of Licensee's Station Manager(s), receptionist or such other personnel as may be employed by Licensee in the operation of the Station; (b) insurance costs relating to Licensee's owned and leased assets and operations; (c) Licensee's own telephone, delivery and postal service; (d) income, gross receipts, sales, real property, personal property, excise and/or any other taxes of any nature whatsoever related to the ownership of Licensee's assets or Licensee's own programming efforts on the Station; and (e) lease payments, power and other utility bills and maintenance costs (other than maintenance costs due directly to action or inaction of Programmer, for which costs Licensee shall be reimbursed by Programmer) for the Station's studio and transmitter facilities, including, but not limited to all equipment and furniture located therein.

5. Programmer's Responsibility for Expenses. Programmer shall be responsible for all direct and indirect costs of the production of the programming to be provided by Programmer to the Station, including, but not limited to: (a) salaries, payroll taxes, insurance and related costs of all personnel employed by Programmer in connection with production of the programming, promotion of that programming and the sale of advertising in that programming; (b) costs of sales and promotion in connection with the programming provided by Programmer to the Station; (c) maintenance of studios and all equipment necessary for the production of Programmer's programming and its delivery to the Station for broadcast; (d) insurance costs relating to Programmer's equipment and assets used in its operation of the Station; (e) power and utilities at Programmer's facilities where programming is produced, if any; (f) income, gross receipts, sales, real property, personal property, excise or any other taxes of any nature whatsoever related to the ownership of Programmer's assets or the programming it supplies to the Station; (g) all performing rights licensing fees for music and other material contained in the programming provided by Programmer; and (h) Arbitron or other rating service fees incurred for use of ratings data relating to the Station after the Effective Date.

6. Licensee's Authority. Notwithstanding anything to the contrary in this Agreement, Licensee shall have full authority and power over the operation of the Station during the Term. Licensee shall be responsible for all programming it furnishes for broadcast on the Station and for the payment of the salaries of all of Licensee's employees, all of whom shall report solely to and be accountable solely to the Licensee. Licensee shall retain the right to interrupt or preempt Programmer's programming at any time if Licensee in good faith determines the programming is not in the public interest, unsatisfactory, unsuitable or violates the FCC's rules, or in case of an emergency or Emergency Alert System ("EAS") activation, or for the purpose of providing programming which Licensee determines to be of greater national,

regional or local importance; provided, however, that all revenues realized, if any, by Licensee as a result of such interruption or preemption shall promptly be remitted to Programmer. In the event Licensee shall interrupt or preempt Programmer's programming as described above or any of Programmer's programming is not broadcast over the Station at the Station's full authorized facilities, Programmer may elect, in lieu of receiving revenues realized by Licensee as a result of such interruption, to reduce its monthly payments due pursuant to Section 3 above on a prorated basis or, at Programmer's election, require Licensee to refund to Programmer promptly the appropriate prorated amount of the fee already paid under such Section 3. Programmer will prepare and furnish to Licensee such information, records and reports pertaining to Programmer's programming in sufficient detail as is necessary to enable Licensee to comply with all rules and policies of the FCC or any other government agency having jurisdiction over Licensee.

7. Advertising and Programming Revenues. Programmer shall retain all revenues from the sale of advertising time and program time on the programming it broadcasts on the Station and all receivables pertaining to such programming shall belong to Programmer.

8. Political Advertising. At least ninety (90) days before the start of any primary or general election campaign, Programmer shall clear with Licensee the rates to be charged political candidates for public office to be sure that the rate is in conformance with applicable law and policy. Programmer shall provide Licensee with access to all its books and records regarding the pricing of advertising sold on the Station in order to confirm that political rate is correct. Within twenty-four (24) hours of any request to purchase time on the Station on behalf of a candidate for public office or to support or urge defeat of an issue on an election ballot, Programmer shall report the request, and its disposition, to Licensee so that appropriate records can be placed in the Station's public file. In the event that Programmer fails to provide adequate broadcast time for the broadcast of programming or advertising by political candidates, Licensee shall have the right to preempt Programmer's programming to make such time available to these political candidates, provided that any consideration received for the sale of the political advertising is paid to Programmer.

9. Licensee's Representations, Warranties and Covenants. Licensee represents, warrants and covenants to Programmer that:

(a) Qualification. Licensee is legally qualified, empowered and able to enter into and carry out this Agreement, and that its performance hereof shall not violate the terms of any other agreement by which it is bound or to which it is a party.

(b) Authorizations. Licensee now holds or shall hold on the day that the Station commences operation, all permits and authorizations necessary for the operation of the Station including all FCC permits and authorizations.

(c) No Violation. Licensee, to its knowledge, is not 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 material default or violation would have an adverse effect on Licensee or its assets or on its ability to perform this Agreement.

(d) Compliance. Licensee shall operate the Station in compliance with all applicable provisions of the Act and the rules, regulations and policies of the FCC and all other applicable laws.

(e) Transmitting Facilities. The Licensee shall promptly construct the transmitting facilities of the Station in accordance with good engineering practice and all applicable FCC rules and regulations. The Station shall comply with all engineering requirements as set forth in its FCC authorizations, and Licensee shall take all steps reasonably necessary to insure compliance therewith.

(f) Employees. Licensee shall retain, on a full time basis, a Station Manager or Managers who shall direct the day-to-day operation of the Station and other employees, and shall also retain such other personnel as are required by the rules and regulations of the FCC. Licensee shall be responsible for insuring that qualified control operators monitor and control the Station's transmissions at all time, to the extent required by applicable FCC rules and regulations, though employees of Programmer may assist in such monitoring.

(g) Station Identification. Licensee shall insure that all required Station Identification announcements are broadcast as required by FCC rules and regulations.

(h) Emergency Broadcasting. Licensee shall maintain appropriate EAS receivers, tone generators, and such other equipment as may be required to conform to FCC rules and regulations.

(i) Public Inspection File. Licensee shall maintain the Station's public inspection file.

10. Programmer's Representations, Warranties and Covenants. Programmer represents, warrants and covenants to Licensee that:

(a) Qualification. Programmer is legally qualified, empowered and able to enter into and carry out this Agreement.

(b) Compliance. The programming supplied for broadcast on the Station shall comply with the Act, as amended, all FCC rules, regulations and policies, and with all programming standards established by Licensee. The programming will also meet all industry standards for technical quality.

(c) Station Identification. Programmer shall cooperate with Licensee to insure that all required Station Identification announcements are broadcast as required by applicable FCC rules and regulations. Further, Programmer shall submit to Licensee for Licensee's approval any promotional material which will identify the station by call letters or frequency for approval by Licensee at least two (2) days prior to use of such material by Programmer.

(d) Emergency Broadcasting. Programmer shall cooperate with Licensee to insure that all required EAS announcements are broadcast as required by applicable FCC rules and regulations.

(e) Music Licenses. Programmer shall obtain, at its own cost and expense, music licenses for the music in the programs it broadcasts. The performing rights to all music contained in its programming is and shall be licensed by BMI, ASCAP or SESAC or is in the public domain.

(f) Licensed Operators. Programmer shall provided, at its own cost and expense, licensed operators to monitor the Station's operations subject to the oversight and control of Licensee.

(g) Liens. Programmer shall not cause or permit any liens, encumbrances, foreclosures, contractual defaults, or outstanding balances of any kind or nature whatsoever which would impede or impair Programmer's ability to meet its obligations under this Agreement.

(h) Payment of Obligations. Programmer shall promptly pay any and all expenses or obligations of any kind or nature whatsoever relating to the provision of programming when such expenses become due.

(i) Broadcast Information. Programmer shall coordinate with Licensee to determine the problems, needs and issues of importance to the Station's service area and shall provide Licensee with documentation of the programs it has broadcast which address problems, needs and interests. Programmer shall provide local news and public affairs programming relevant to the station's service area of sufficient quality to assist Licensee in satisfying its obligations to respond to the needs of its listeners.

(j) Public Letters. Programmer shall forward to Licensee any letter from a member of the general public addressing the Station's programming or other documentation which comes into its custody which is required to be included in the Station's public file.

#### 11. Indemnification.

(a) Programmer shall indemnify and hold harmless Licensee from and against any and all claims, losses, costs, liabilities, damages and expenses (including reasonable attorneys' fees) (collectively, "Loss and Expense") arising out of: (i) programming originated by Programmer; (ii) any breach of its representations, warranties, covenants or obligations under this Agreement, including but not limited to any liability for libel, defamation of character or similar cause of action or any forfeiture or fine imposed by the FCC or any other governmental authority; and (iii) the defense or settlement of any claims which may be made by any third party against Licensee claiming an interest in the acquisition of the Station or claiming any rights to program the Station pursuant a local marketing agreement, with respect to which Licensee agrees to notify Programmer of such claims in order to afford Programmer an opportunity to defend

against such claims, provided that Licensee represents and warrants to Programmer that Licensee does not have a legally binding obligation to sell the Station to any third party or to provide programming to any third party pursuant to a local marketing agreement or otherwise. Programmer agrees to indemnify Licensee against all Loss and Expense promptly upon receipt of written notice from Licensee that such Loss and Expense has been incurred.

(b) Licensee shall indemnify and hold harmless Programmer from and against any and all Loss and Expense arising out of any programming originated by Licensee and any breach of his representations, warranties, covenants or obligations under this Agreement, including but not limited to any liability for libel, defamation of character or similar cause of action or any forfeiture or fine imposed by the FCC or any other governmental authority.

(c) The obligation of Programmer and Licensee to indemnify and hold each other harmless as set forth in this Agreement shall survive the termination of this Agreement.

## 12. Termination.

(a) Grounds. In addition to any other remedies available at law or equity, this Agreement may be terminated as set forth below, but only as set forth below, by either Licensee or Programmer by written notice to the other, if the party seeking to terminate is not then in material default or breach hereof, upon the occurrence of any of the following:

(i) This Agreement is declared invalid or illegal in whole or material part by an order or decree of the FCC or any other administrative agency or court of competent jurisdiction and such order or decree has become final and no longer subject to further administrative or judicial reconsideration or review; but only if, after good faith efforts by the parties, the agreement cannot be modified so as to resolve the legal issues without materially changing the rights, benefits and obligations of the parties hereunder.

(ii) The other party is in material breach of its obligations hereunder and has failed to cure such breach within fifteen (15) days of written notice thereof to that party from the non-breaching party;

(iii) The mutual written consent of both parties;

(iv) The other party shall make a general assignment for the benefit of creditors, files or has filed against it a petition for bankruptcy, reorganization or an arrangement for the benefit of creditors, or for the appointment of a receiver, trustee or similar creditors' representative for the property or assets of such party under any federal or state insolvency law, which if filed against such party, has not been dismissed within thirty (30) days thereof;

(v) There has been a change in FCC rules or policies that would cause this Agreement or any material provision hereof to be in violation thereof and such change is not the subject of an appeal or further administrative review; but only if, after good faith efforts by the parties, the agreement cannot be modified so as to resolve the legal issues without materially changing the rights, benefits and obligations of the parties hereunder.

(vi) By either party not then in breach of the Asset Purchase Agreement upon the termination of that agreement.

(b) Effects of Termination. In the event of termination hereunder, after the date of such termination (the "Termination Date") Licensee shall be under no further obligation to make available to Programmer any further broadcast time or broadcast transmission facilities and Programmer shall have no further obligation to make any payments to Licensee hereunder, except as provided below. Programmer shall be fully responsible for all liabilities, debts and obligations which it has incurred as a result of this Agreement, including but not limited to accounts payable, barter and trade-out agreements and unaired advertising. Programmer shall be entitled to retain all accounts receivable of the Station accrued as of the Termination Date relating to advertising time sold by Programmer between the Effective Date and the Termination Date. For a period of 180 days following the Termination Date, Licensee agrees to use his reasonable efforts to collect such accounts receivable and shall remit all sums collected to Programmer monthly. Any uncollected accounts after such 180-day period shall be returned to Programmer for collection, and Licensee shall be relieved of any additional responsibilities with respect to such accounts. To the extent that any invoice, statement or bill submitted to Licensee after the Termination Date or any payment made by Programmer prior to the Termination Date relates to expenses incurred in operating the Station by Licensee or programming the Station by Programmer for periods both before and after the Termination Date, such expenses shall be prorated between Licensee and Programmer in accordance with the principle that Licensee shall be responsible for expenses of programming the Station allocable to the period on and prior to the Termination Date and Licensee shall be responsible for expenses of operating the Station allocable to the period after the Termination Date. Each party shall reimburse the other party for expenses paid by the other party to the extent appropriate to implement the proration of expenses pursuant to the preceding sentence.

Upon termination of this Agreement according to the provisions of this Section 12, the payments, reimbursements and fees provided for hereunder shall be prorated on a daily basis to the Termination Date of this Agreement. Upon such termination, other than for the closing of the sale of the Station to Programmer, Licensee shall cooperate reasonably with the Programmer to the extent permitted to enable Programmer to fulfill advertising or other programming contracts then outstanding, in which event Licensee shall receive as compensation for the carriage of such programming by Licensee that which otherwise would have been paid to Programmer hereunder. In the event of termination by Licensee pursuant to Section 12(a)(ii) hereof, Licensee shall be entitled to retain any and all sums paid to Licensee by Programmer pursuant to this Agreement as liquidated damages.

(c) Programmer's Additional Termination Rights. Notwithstanding anything herein to the contrary and in addition to Programmer's termination rights in Section 12 above, Programmer shall have the right to terminate this Agreement if the Station, upon commencing operation, is off the air for a substantial part of any five (5) consecutive day period, or for a total of sixty (60) hours or more in any thirty (30) day period and, in each case, Licensee shall not have diligently used his best efforts to cause the Station's engineer to put the Station back on the air. In the event the Station is off the air as described above, and Licensee has not diligently

used his best efforts or is unable to put such Station back on the air, Programmer may elect to reduce its Monthly Payment due pursuant to Section 3 on a prorated basis or, at Programmer's election, require Licensee to refund to Programmer the appropriate prorated amount of the fee already paid under such Section 3. In the event such outages are caused by circumstances beyond the Licensee's control and are beyond the control of Licensee's ability to correct, Programmer shall not have the right to terminate this Agreement pursuant to this provision.

13. No Release of Liability Though Termination. No termination pursuant to Section 13 shall relieve any party of liability it would otherwise have for breach of this Agreement.

14. Notices. All notices and communications hereunder or with respect hereto shall be deemed to have been duly given to a party when in writing and actually delivered to such party as follows, or, if mailed, upon mailing via first class certified United States mail, postage prepaid, addressed as follows:

If to Programmer:

Sand Hill Media Group, LLC  
c/o Eric Frandsen  
810 West 200 North  
Logan, Utah 84321

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

David D. Oxenford, Esq.  
Davis Wright Tremaine LLP  
1919 Pennsylvania Avenue, N.W.  
Suite 200  
Washington, D.C. 20006

If to Licensee:

College Creek Media, LLC  
980 N. Michigan Avenue  
Suite 1880  
Chicago, IL 60611

Aaron Shainis, Esq.  
Shainis & Peltzman, Chartered  
1850 M Street, N.W.  
Suite 240  
Washington, D.C. 20036

or such other persons or addresses as either party may hereafter specify by ten (10) days prior written notice to the other.

15. Assignment. This Agreement and Licensee's or Programmer's rights and obligations hereunder may not be assigned without the written consent of the other party, provided that either party may assign this Agreement to a company controlled by it, or under common control with it, without such consent, but any such assignment shall not relieve the assignor of its obligations hereunder. Each attempted assignment, if any, not in compliance with this Section 15 shall be null and void. This Agreement shall be binding upon and inure only to the benefit of the parties hereto and their respective successors and assigns.

16. Entire Agreement. This Agreement sets forth the entire understanding of the parties at the time of execution and delivery hereof regarding the subject matter hereof, and all prior agreements between them with respect to the subject matter hereof shall be of no further force or effect. This Agreement may be amended only by an instrument in writing by both parties.

17. Headings. The headings in this Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Agreement.

18. Waiver. The waiver by either party of any matter provided for herein shall be in writing in order to be effective and shall not be deemed to be a waiver of (a) any such matter on any other occasion or (b) any other matter.

19. Counterparts. More than one counterpart of this Agreement may be executed by the parties and each fully executed counterpart shall be deemed an original of this Agreement.

20. Governing Law. This Agreement shall be construed in accordance with and be governed by the laws of the State of Idaho, without regard to its choice of law rules. Exclusive venue and jurisdiction with respect to any lawsuit or court action under this Agreement shall be in the state or federal courts of the State of Utah.

21. Attorney's Fees. Notwithstanding anything herein to the contrary, in the event of commencement of suit by either party to enforce the provisions of this Agreement, the prevailing party in such suit shall be entitled to receive attorney's fees and costs that the court in which such suit is adjudicated may determine reasonable in addition to all other relief granted.

22. Severability. In the event that any term or provision of this Agreement is determined to be void, unenforceable, or contrary to law, the remainder of this Agreement shall continue in full force and effect provided that such continuation would not materially diminish the benefits of this Agreement for either party.

23. Authority of Signatory. Each individual signing this Agreement below personally represents and warrants that such individual has full corporate power and authority to execute and to deliver this Agreement on behalf of the party whose name appears directly above the signature of such individual.

24. Certifications.

(a) Licensee's Certification. Licensee hereby certifies that it maintains ultimate control over the Station's facilities, including specifically control over the Station's finances, personnel and programming.

(b) Programmer's Certification. Programmer hereby certifies that this Agreement complies with the provisions of paragraphs (a)(1) and (e)(1) of Section 73.3555 of the FCC's rules.

25. Trademarks. Licensee hereby grants Programmer an unlimited license to use any and all trademarks, service marks, patents, trade names, jingles, slogans, logotypes and other intangible rights owned and used or held for use by Licensee in conjunction with the Station. All trademarks, service marks, patents, trade names, jingles, slogans, logotypes and other intangible rights used by Programmer in its programming supplied to the Station shall be solely the property of Programmer and, upon termination of this Agreement, Licensee shall have no rights thereto.

26. Best Efforts. Licensee and Programmer each agree to use their best efforts consistent with commercial reasonableness in the performance and fulfillment of all terms and conditions of this Agreement, and agree to execute such other and further documents as maybe reasonably required to carry out their intent as expressed hereunder.

27. Regulatory Requirements. It is recognized that all obligations of Licensee hereunder are subject to its overriding obligations as a public trustee to serve the needs and interests of Aberdeen, Idaho and to broadcast programming which Licensee views as consistent with those needs and interests and the rules and regulations of the FCC. It is expressly understood by the parties hereto that Programmer shall not exercise any control over the day-to-day operations of the Station, and Licensee shall be solely responsible for the management, operation and regulatory compliance of the Station. All employees of Licensee or Programmer who are involved with the operation of the Station or the provision of programming to the Station shall ultimately be responsible to Licensee on all matters within its discretion as an FCC licensee.

28. Payola/Plugola. Neither Programmer nor its agents, employees, consultants or personnel shall accept any consideration, compensation, gift or gratuity of any kind whatsoever, regardless of its value or form, including but not limited to, a commission, discount, bonus, material, supplies or other merchandise, services or labor (collectively, "Consideration"), whether or not pursuant to written contracts or agreements between Programmer and merchants or advertisers, unless the payer is identified in the program for which Consideration was provided as having paid for or furnished such Consideration, in accordance with the Act and FCC requirements.

29. No Agency. No agency relationship between the parties shall be expressed or implied by the terms of this Agreement, nor shall this Agreement be construed to create a joint venture or partnership between the parties. Neither party shall hold itself out as an agent, partner or joint venturer with the other. All contracts for the sale of airtime, purchase orders, agreements, sales materials and similar documents produced or executed by Programmer shall be executed in the name of Programmer, and not on behalf of the Station or the Licensee, and shall represent that Programmer is not the licensee of the Station.

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

**SAND HILL MEDIA GROUP, LLC**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**COLLEGE CREEK MEDIA, LLC**

By: Christopher Deane  
Title: Manager

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

**SAND HILL MEDIA GROUP, LLC**

By: [Signature]  
Title: Vice President

**COLLEGE CREEK MEDIA, LLC**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

## **EXHIBIT A**

Programmer shall pay Licensee a monthly fee (“the Monthly Fee”) in an amount equal to the amounts Licensee has paid in monthly reasonable and prudent operating costs directly associated with the operation of the Station. The operating costs shall be the following: the salaries, payroll taxes and other benefits of the Licensee’s employees at the Station in amounts not to exceed \$2,000 per month; cost of electricity, insurance, tower rent and other utilities as necessary to operate the station’s transmission facilities; cost of a contract engineer to maintain the Station in an amount not to exceed \$500 per month; income, gross receipts, personal property, excise or other taxes related to Licensee’s ownership of the station during the LMA period; the cost of FCC regulatory fees and other required FCC filings; and such other costs as are mutually agreed by the Parties. It is understood by the parties that the costs associated with the licensee’s employees and the cost of the contract engineer may be subject to adjustment to reflect market realities.

Each month, Licensee shall provide an itemized list of such expenses to Programmer, with copies of receipts for such expenditures; Programmer shall make the Monthly Payment to reimburse Licensee for these expenses within fifteen (15) days of the receipt of the itemized list.