

## **LOCAL MARKETING AGREEMENT**

This LOCAL MARKETING AGREEMENT (the "Agreement") is made as of this 13th day of August, 2002, by and between Withers Family Texas Holdings, LP, a Texas limited partnership ("Operator"), and Eagle Creek Radio, LLC, a Delaware limited liability company (the "Owner").

### **WITNESSETH:**

WHEREAS, the Owner holds the FCC licenses issued by the Federal Communications Commission ("FCC") to operate the radio station K-SIX (AM) in Corpus Christi, Texas (the "Station");

WHEREAS, simultaneously herewith Owner and Operator are entering into an Asset Purchase Agreement (the "Purchase Agreement") providing for the purchase of the assets relating to the operation of the Station by Operator subject to the consent of the Federal Communications Commission ("FCC"); and

WHEREAS, in accordance with Section 7.04 of the Purchase Agreement, and to ensure that Operator manages the operation of the Station pursuant to the policies established by Owner and in accordance with the Communications Act of 1934, as amended (the "Act"), and the rules and regulations promulgated by the FCC, the parties desire to enter into this Agreement.

NOW, THEREFORE, in consideration of these premises and the mutual promises, undertakings, covenants and agreements of the parties contained in this Agreement, the parties hereto do hereby agree as follows:

## **ARTICLE 1** **PROGRAMMING AGREEMENT**

1.1 Brokered Programming. Operator hereby agrees to provide, for transmission by the Station, news, sports, informational and entertainment programming and associated advertising, promotional, and public service programming announcement matter sufficient to program the Station on a daily basis throughout the year ("Brokered Programming"), in conformance with the minimum operating requirements of the FCC and subject to this Section and Section 1.2 hereof. All Brokered Programming and its transmission by the Station shall be subject to the supervision and control of the Owner. Operator warrants that during the Term, as defined below, it will be fully responsible for and will fulfill all obligations under all contracts entered into by Operator for programming to be broadcast over the Station.

1.2 Preemption. The Owner may at its reasonable discretion preempt or delete any Brokered Programming which the Owner believes, in good faith, to be unsatisfactory, unsuitable or contrary to the public interest, and may substitute programming which, in the Owner's reasonable opinion, is of greater local or national importance. Owner will not preempt any Brokered Programming for its own commercial advantage. Should Owner reject, interrupt or preempt any part of the Brokered Programming pursuant to this paragraph, the payments, reimbursements and fees provided for in this Agreement shall be prorated accordingly.

1.3 Final Order. “Final Order” shall mean an action of the FCC that has not been reversed, stayed, enjoined, set aside, annulled or suspended, and with respect to which no timely filed petition for stay, reconsideration or administrative or judicial appeal or sua sponte action of the FCC with comparable effect is pending and as to which the time for filing any such petition or appeal (administrative or judicial) or for the taking of any such sua sponte action of the FCC has expired.

## **ARTICLE 2** **OPERATIONS**

2.1 Compliance with FCC Regulations. The Owner will retain ultimate responsibility for (a) the employment of such personnel as may be necessary to assure compliance with all FCC regulations, including all technical regulations governing the operation of the Station; (b) complying with all programming content requirements; and (c) meeting FCC requirements governing political programming, sponsorship identification, lottery and contest matters, maintenance of the Station’s political files, and all other FCC requirements and duties. Operator will cooperate with the Owner so as to assist the Owner in meeting FCC requirements pertaining to operation of the Station.

2.2 Provision of Programming. Subject to the Owner’s control and supervision, Operator shall provide the programming specified in Section 1.1 hereof and shall be responsible for implementing its transmission by the Station.

2.3 Station Staffing. The Owner shall have sole discretion to make and effectuate all of its own staffing and personnel decisions for the Station, including the sole responsibility to determine appropriate levels of staffing to fulfill the Owner’s duties under Section 2.1 herein. Operator shall have no control or right to review whatsoever over any decision by the Owner to hire or dismiss any employee of the Owner.

2.4 Station Operation. The Owner shall retain ultimate control over the Station’s facilities, including specifically control over station’s finances, personnel and programming. The Owner shall retain full responsibility for ensuring compliance with all FCC technical rules.

2.5 Operator’s Responsibilities. During the Term, Operator will be responsible for, and will pay, all costs and expenses associated with procuring and producing the Brokered Programming and selling commercial advertising thereon and all other activities of Operator with respect to the Station, including, without limitation, (i) the salaries, commissions, payroll taxes, insurance and all other related costs for all of Operator’s personnel involved in the operation of the Station, (ii) all promotional expenses and licensing fees incurred in connection with the Brokered Programming, and (iii) the costs and expenses of operating, maintaining and insuring all tower, studio, production and master control facilities used by Operator. Additionally, during the Term, Operator will be responsible, and will pay, for all expenditures incurred by or on behalf of Owner in connection with operating the Station, including but not limited to the following the expenditures set forth on Attachment B. If the Station goes silent, ceases broadcasting, or otherwise fails to comply with applicable FCC requirements or regulations, Operator shall be responsible for making all necessary FCC applications in order to

resume broadcasting and fully comply with any FCC requirements and shall be responsible for the payment of all legal fees, filing fees and other costs associated therewith.

2.6 Owner's Responsibilities. During the Term, the Owner will be responsible for, and will pay, all of the expenses related to employees employed by Owner in connection with the operation of the Station.

### **ARTICLE 3**

#### **CONSIDERATION**

3.1 Consideration. Operator and Owner agree that the transfer of the Letter of Intent from James Withers, an individual and sole owner of Operator ("Withers"), to Eagle Creek Broadcasting, LLC ("Eagle Creek"), pursuant to the terms of a certain agreement, dated December 21, 2001 (the "Exchange Agreement"), entered into between Eagle Creek and Withers, shall constitute the full consideration for the obligations contemplated by this Agreement.

### **ARTICLE 4**

#### **TERM**

4.1 Term. The term of this Agreement shall commence on the date hereof and shall terminate on the earlier to occur of the following: (a) the closing of the sale of the assets and the assignment of the license for the Station pursuant to the Purchase Agreement, or (b) the termination of the Purchase Agreement in accordance with the terms thereof (the "Term").

4.2 Termination for Refusal to Transmit Programs. In the event that the Owner refuses to transmit programming under this Agreement (except as a result of Operator's default under any of its obligations herein or except as provided in Section 8.1) for either twenty-four (24) consecutive hours or one-half hour in each day in any period of thirty (30) consecutive days, Operator shall have the right, exercisable at any time within sixty (60) days after the end of such period, to terminate this Agreement as of any date within one hundred twenty (120) days of the date Operator notifies the Owner of its election to terminate this Agreement. If such termination shall occur pursuant to this Section, such termination shall extinguish and cancel this Agreement without further liability of Operator to the Owner.

### **ARTICLE 5**

#### **ASSIGNABILITY, ADDITIONAL AGREEMENTS**

5.1 Assignability.

(a) Except as set forth in this Section, neither party shall assign or transfer its rights, benefits, duties or obligations under this Agreement without the prior written consent of the other party.

(b) The Owner shall have the right to freely assign any or all of its rights or delegate any of its duties under this Agreement to any affiliate of the Owner, provided that no such assignment or delegation shall relieve the Owner of its liability under this Agreement.

(d) This Agreement and all of the provisions hereof shall inure to the benefit of and be binding upon the Owner, Operator and their respective successors and assigns. Each party hereto shall be solely responsible for the cost of an assignment by such party of any of its rights or the delegation of any of its duties hereunder.

5.2 Additional Agreement. By separate agreement and concurrently with the execution of this Agreement, the parties will enter into the Purchase Agreement.

## **ARTICLE 6**

### **REGULATORY MATTERS**

6.1 Renegotiation Upon FCC Action or Other Regulatory Changes. If the FCC determines that this Agreement is inconsistent with the Owner's licensee obligations or is otherwise contrary to FCC policies, rules and regulations, or if regulatory, legislative, or judicial action subsequent to the effective date of the Purchase Agreement alters the permissibility of this Agreement under the FCC's Rules or the Communications Act of 1934, as amended, the parties shall renegotiate this Agreement in good faith and recast this Agreement in terms that are likely to cure the defects perceived by the FCC or the changes caused by regulatory, legislative, or judicial action and return a balance of benefits provided by the Agreement in its current terms. If, after such good faith negotiations, either party determines that recasting the Agreement to meet the defects perceived by the FCC is impossible without materially changing the relationships contemplated by the parties, either party may terminate this Agreement without further liability upon thirty (30) days' prior written notice. If termination shall occur pursuant to this Section, such termination shall extinguish and cancel this Agreement.

6.2 FCC Matters. Should a change in FCC policy or rules make it necessary to obtain FCC consent for the implementation, continuation or further effectuation of any element of this Agreement, both parties hereto shall use their best efforts diligently to prepare, file and prosecute before the FCC all petitions, waiver requests, construction permit applications, amendments, rulemaking comments and other related documents necessary to secure and/or retain FCC approval of all aspects of this Agreement. Operator shall bear the reasonable cost of preparation of any such documents. Notwithstanding anything in this Agreement to the contrary (and except filings required as a matter of law), it is understood that no filing shall be made with the FCC with respect to this Agreement unless both parties hereto have reviewed said filing and consented to its submission.

## **ARTICLE 7**

### **COVENANTS OF OWNER AND OPERATOR**

7.1 Owner's Affirmative Covenant. Owner covenants and agrees that it will comply fully in all material respects with all applicable federal, state and local laws, rules and regulations (including, without limitation, all FCC rules, policies and regulations), including but not limited to the regulations and restrictions set forth on Attachment A hereto, and pertinent provisions of all contracts, permits and pertinent agreements to which it is a party or is otherwise bound.

7.2 Operator's Affirmative Covenant. Operator covenants and agrees that it will comply fully in all material respects with all applicable federal, state and local laws, rules and regulations, including, without limitation, all FCC rules, policies and regulations in the provision of the Brokered Programming to the Owner and the operation of the Station.

## **ARTICLE 8**

### **MISCELLANEOUS**

8.1 Force Majeure. Notwithstanding anything contained in this Agreement to the contrary, neither party shall be liable to the other for failure to perform any obligation under this Agreement (nor shall any charges or payments be made in respect thereof) if prevented from doing so by reason of acts of God, strikes, lockouts or other industrial disturbances, orders or restraints of any kind of the government of the United States or any state or any of their departments, agencies, political subdivisions or officials, embargoes, civil commotion, rationing or other orders or requirements, acts of civil or military authorities, acts of terror, epidemics, landslides, fires, lightning, earthquakes, hurricanes, tornadoes, storms, droughts, floods, partial or entire failure of utilities or other causes beyond the reasonable control of the parties, and all requirements as to notice and other performance required hereunder within a specified period shall be automatically extended to accommodate the period of pendency of such contingency which shall interfere with such performance.

8.2 Trademarks. For the term of this Agreement, the Owner hereby grants Operator, subject to the terms and conditions of this Agreement, a license to use, solely in connection with the Station, any and all trademarks, service marks, patented technology, trade names, jingles, slogans, and logos owned and used or held for use by the Owner in connection with the Station. The Owner agrees to execute such additional documentation as may be necessary to effectuate the license granted to Operator under this Section. The Owner shall have the right to control the quality of goods and services with which Operator uses the trademarks, service marks and trade names licensed to Operator herein. Except in connection with its operation of the Station in its capacity as licensee, the Owner shall have no right to, and without Operator's prior written consent shall not use, any trademarks, service marks, patented technology, trade names, jingles, slogans and logos owned and used or held for use by Operator (from any person or entity other than the Owner or its successors and assigns) in connection with Operator's performance under this Agreement.

8.3 Notice. All notices, request, demands and other communications that are required or may be given pursuant to the terms of this Agreement shall be in writing and shall be deemed given when delivered by hand, overnight courier, or sent by facsimile transmission or on the third day after mailing if mailed by registered mail, postage prepaid, return-receipt requested, as follows:

(a) If to the Operator, to:

Withers Family Texas Holdings, LP

\_\_\_\_\_  
Attention: \_\_\_\_\_

Facsimile: \_\_\_\_\_

with a copy to:

Davis Wright Tremaine, LLP  
1500 K Street, N.W.  
Suite 450  
Washington, DC 20005  
Attention: Pamela C. Cooper  
Facsimile: 202-508-6699

(b) If to Owner to:

Brian W. Brady  
Eagle Creek Radio, LLC  
2193 Association Drive, Suite 300  
Okemos, Michigan 48864  
Fax No.: (517) 347-4675

with a copy to:

Fred L. Levy  
Sonnenschein Nath & Rosenthal  
1301 K Street, N.W., Suite 600, East Tower  
Washington, D.C. 20005  
Tel. No.: (202) 408-6407  
Fax No.: (202) 408-6399

or such other address as any party shall have designated by notice in writing to the other parties.

8.4 Duty to Consult. Each party agrees that it will use its best efforts not to take any action that will unreasonably interfere, threaten or frustrate the other party's purposes or business activities with respect to the Station, and that it will keep the other party informed of, and coordinate with the other party regarding, any of its activities that may have a material effect on such party.

8.5 Severability. Subject to Section 6.1 hereof, if any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remainder of this Agreement shall not be affected thereby, and the parties agree to use their best efforts to negotiate a replacement article that is neither invalid, illegal nor unenforceable.

8.6 Entire Agreement. This Agreement, the Purchase Agreement and the Exchange Agreement constitute the entire agreement of the parties with respect to the transactions contemplated herein and supersede all prior agreements and understandings of the parties, oral and written, with respect to such transactions. This Agreement may be modified only by an agreement in writing executed by all of the parties hereto.

8.7 Survival. All representations, warranties, covenants and agreements made herein by the parties hereto or in any certificate to be delivered hereunder or made in writing in connection with the transactions contemplated herein shall survive the execution and delivery of this Agreement. All such representations, warranties, covenants and agreements shall survive for one year past the date on which this Agreement terminates.

8.8 Payment of Expenses. Except as otherwise provided, the Owner and Operator shall pay their own expenses incident to the preparation, negotiation and carrying out of this Agreement.

8.9 Further Assurances. From time to time after the date of execution hereof, the parties shall take such further action and execute such further documents, assurances and certificates as either party reasonably may request of the other of effectuate the purposes of this Agreement.

8.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and shall become effective when each of the parties hereto shall have delivered to it this Agreement duly executed by the other party hereto.

8.11 Headings. The headings in this Agreement are for the sole purpose of convenience of reference and shall not in any way limit or affect the meaning or interpretation of any of the terms or provisions of this Agreement.

8.12 Dealings with Third Parties. Neither party is nor shall hold itself out to be vested with any power or right to bind contractually or act on behalf of the other as its contracting broker, agent or otherwise for committing, selling, conveying or transferring any of the other party's assets or property, contracting for or in the name of the other party, or making any contractually binding representations contractually binding such party.

8.13 Governing Law. This Agreement shall be construed under and in accordance with the laws of Texas without giving effect to the principles of conflict of laws.

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

**EAGLE CREEK RADIO, LLC**

By: Brian Brady, President of Eagle Creek Broadcasting, LLC, the managing member of Eagle Creek Radio, LLC.

/s/ Brian Brady

**OPERATOR:**

**WITHERS FAMILY TEXAS HOLDINGS, LP**

By: /s/ James Withers

Name: \_\_\_\_\_

Title: limited partner



## ATTACHMENT A

### REGULATIONS AND RESTRICTIONS

Operator will take care to observe and exercise reasonable diligence to comply with the following regulations and restrictions in the preparation, writing and broadcasting of the Brokered Programming:

- (1) Respectful of Faiths. The subject of religion and references to particular faiths, tenets and customs will be treated with respect at all times.
- (2) No Attacks. The Brokered Programming will not be used as a medium for attack on any race, ethnic group, gender, nationality, disability, faith, denomination or sect or upon any individual or organization.
- (3) Controversial Issues. Any discussion of controversial issues of public importance will be reasonably balanced with the presentation of contrasting viewpoints in the course of overall programming; no attacks on the honesty, integrity or like personal qualities of any person or group of persons will be made during the discussion of controversial issues of public importance; and, during the course of political campaigns, the Brokered Programming is not to be used as a forum for editorializing about individual candidates.
- (4). No Plugola or Payola. The mention of any business activity or “plug” for any commercial, professional or other related endeavor, except where contained in an actual commercial message of a sponsor, is prohibited. No commercial messages (“plugs”) or undue references shall be made in programming presented over the Station to any business venture, profit making activity or other interest (other than noncommercial announcements for bona fide charities, religious activities or other public service activities) in which Brokered Programming is directly or indirectly interested without the same having been approved in advance by the Station’s general managers and such broadcast being announced, logged and sponsored.
- (5) No Gambling. Any form of gambling on the Brokered Programming is prohibited.
- (6) Election Procedures. At least ninety (90) days before the start of any election campaign, Operator will clear with the Station’s general managers the rate(s) that Operator will charge for the time to be sold to candidates for public office or their supporters to make certain that such rate(s) conforms with applicable law and the Station’s policies.
- (7). Required Announcements. Operator will broadcast any announcements required by applicable law or the Station’s policies.
- (8) Credit Terms Advertising. Pursuant to rules of the Federal Trade Commission, no advertising of credit terms will be made over the Station beyond mention of the fact that, if desired, credit terms are available.

- (9). No Illegal Announcements. No announcements or promotions prohibited by law of any lottery or game will be made over the Station. Any game, contest or promotion relating to, or to be presented over, the Station must be fully stated and explained in advance to Owner, which reserves the right, in its discretion to reject any game, contest or promotion.
- (10) Licensee Discretion Paramount. In accordance with Owner's responsibility under the Communications Act of 1934, as amended, and the rules and regulations of the FCC, Operator reserves the right to reject or terminate any advertising proposed to be presented or being presented over the Station which is in conflict with the Station's policies or which, in Owner's judgment, would not serve the public interest.
- (11) Programming Prohibitions. Operator will not knowingly broadcast any of the following programs or announcements:
- (a) False Claims. False, deceptive or unwarranted claims for any product or service.
  - (b) Unfair Imitation. Infringements of another advertiser's rights through plagiarism or unfair imitation of either program idea or copy or any other unfair competition.
  - (c) Profanity and Foul Language. Any programs or announcements that are slanderous, obscene, profane, vulgar, repulsive or offensive, either in theme or in treatment.

Owner may waive any of the foregoing regulations and restrictions in specific instances if, in its opinion, good broadcasting in the public interest is served thereby.

## ATTACHMENT B

### EXPENDITURES

1. Transmitter operations, maintenance, repairs and replacements
2. Transmitter site rent, utilities and services
3. Salaries, benefits, costs and expenses for Station employees, consistent with historic salaries at the Station
4. Consulting engineering services for the Station's transmitter operations and record keeping
5. Telephone service for the Station
6. FCC filing and regulatory fees
7. Term fees, personal property taxes and real estate taxes
8. Insurance premiums and coinsurance for (a) property and casualty insurance for the tower, transmitting equipment, the studio and studio furnishings and equipment (b) general liability insurance, (c) commercial auto insurance and (d) broadcaster's liability insurance