

AGREEMENT  
(Hawaii Public Television Foundation)

This Agreement, entered into on May 27, 1998, by and between the State of Hawaii through its Director of Commerce and Consumer Affairs, whose address is at 1010 Richards Street, Honolulu, Hawaii 96813, hereinafter referred to as the "Director"; Hawaii Public Television Foundation, a Hawaii nonprofit corporation, whose address is at 223 South King Street, Suite 310, Honolulu, HI 96813, hereinafter referred to as "Hawaii Public Television";

WITNESSETH:

WHEREAS, in Decision and Order No. 154 (Time Warner Entertainment Company, L.P. dba Oceanic Cable), No. 173 (Time Warner Entertainment Company, L.P. dba Sun Cablevision and Kamehameha Cablevision), No. 174 (Time Warner Entertainment Company, L.P. dba Hawaiian Cablevision), No. 185 (Time Warner Entertainment Company, L.P. dba Hawaiian Cablevision of Hilo), Nos. 148, 150 and 187 (TCI of Hawaii, Inc.), Nos. 143 and 208 (G Force, L.L.C. dba Garden Isle Cablevision), and Nos. 152 and 209 (G Force, L.L.C. dba Kauai Cablevision) hereinafter collectively referred to as "Decisions and Orders", the Director required each cable operator to pay an annual fee in an amount equal to one percent (1%) of their annual gross revenues from their respective cable systems (hereinafter referred to as "HPBA Fees") to the Hawaii Public Broadcasting Authority Revolving Fund; and

WHEREAS, Hawaii Public Television has been established as a Hawaii nonprofit corporation for the purpose of developing funding resources for the sole purpose of providing financial support to the management and operation of the Hawaii Public Broadcasting Authority ("HPBA"), which is presently a state entity attached to the Department of Commerce and Consumer Affairs ("DCCA"); and

WHEREAS, at the request of HPBA, the Director has directed the cable operators to remit payment of the HPBA Fee to Hawaii Public Television instead of the Hawaii Broadcasting Authority Revolving Fund; and

WHEREAS, Hawaii Public Television, pursuant to a long range plan to develop financial independence from State of Hawaii general funds, plans to amend its charter and obtain legislative approval so that the operation of HPBA's facilities can be turned over to Hawaii Public Television by the year 2002; and

WHEREAS, the following terms and conditions will take effect as of the date hereof, and in the event the operation of HPBA's facilities are turned over to Hawaii Public Television paragraph E 6 of this Agreement provides for expanded reporting requirements regarding the use of HPBA Fees at such time;

NOW, THEREFORE, the parties hereto mutually agree as follows:

A. Term. The term of this Agreement shall be for the period beginning as of the date hereof and ending June 30, 1998, and shall be automatically extended on an annual basis commencing on July 1, 1998 unless terminated as provided in this Agreement.

B. HPBA Fee/Funds. At the direction of the Director, Hawaii Public Television shall receive and hold, as restricted funds (i.e., funds to be held and maintained solely for the support of HPBA), the HPBA Fees required to be contributed by cable operators pursuant to the Decisions and Orders. The funds may be deposited and maintained in interest bearing accounts in any federally insured financial institution authorized to do business in the State of Hawaii. Hawaii Public Television shall prudently administer the accounts, and shall not commingle the HPBA Fees with other funds without the prior written approval of the Director.

C. Use of HPBA Fee. The HPBA Fees shall be used solely for the support and benefit of HPBA including the operation and management of HPBA and the repair, maintenance, and replacement of its facilities and equipment.

D. Responsibilities of Hawaii Public Television. Hawaii Public Television shall be responsible for the management of the HPBA Fees and other matters as provided in this Agreement.

E. Reporting Requirements. In addition to any other filing required by law, Hawaii Public Television shall file with the Director the following information:

1. Amendments to the articles of incorporation and bylaws no later than 30 days after approval of any such amendment by the board of directors.

2. A roster of the board of directors and officers and their respective term of office no later than 30 days after Hawaii Public Television's annual meeting or no later than 30 days after a change in board membership when the change occurs other than at the annual meeting.

3. Annual verified accounting, which at a minimum shows the amount of HPBA Fees received and how the fees were used for each fiscal year, on or before August 15 of each year (e.g., the 1998-1999 accounting shall be due on or before August 15, 1999). For purposes of this Agreement, "fiscal year" means the twelve month period beginning July 1 and ending June 30.

4. An annual year end activity report on or before August 15 of each year. The report shall summarize the activities of Hawaii Public Television including fund raising and any other activities and information as Hawaii Public Television may deem appropriate, or any other information requested by the Director.

5. Complete list of equipment, services and other purchases acquired with HPBA Fees within 30 days from the date hereof, and thereafter an annual update on or before August 15 of each year.

6. Notwithstanding any provision to the contrary, the Director shall have the right to reasonably require Hawaii Public Television to provide any additional information that the Director deems necessary or appropriate including reports on programming and other matters relating to the operation and management of the television facilities of HPBA. It is understood by the parties that this Agreement is made while HPBA is a state entity attached to DCCA, and as such, reports and information regarding televised programming and other operational matters need not be submitted at this time. However, because the long term plans regarding the television facilities operated and managed by HPBA include the transfer of such operation and management to Hawaii Public Television, all parties understand and agree that before such transfer occurs, the Director will substantially expand the reporting requirements under this Agreement. Any additional requirements imposed by the Director under this subparagraph 6 shall be reasonably related to the purpose of accountability in the use and investments of HPBA Fees.

7. The Director, in the Director's sole discretion, may require an audit of the accounts and designate the auditor or accountant. The cost of the audit shall be paid from interest earned on the accounts.

F. Records Requirements. Hawaii Public Television shall maintain at its office and shall submit to the Director upon request operating policies and procedures as the same may be amended from time to time, and other records as may be reasonably required by the Director.

G. Accessibility. Hawaii Public Television shall at all times comply with applicable provisions of the Americans with Disabilities Act (ADA).

H. Payment for Services. Hawaii Public Television shall not receive any money or other valuable consideration from DCCA. Hawaii Public Television agrees to perform all services, duties, responsibilities and obligations required to be performed by Hawaii Public Television under this Agreement and any subsequent amendment, in exchange for HPBA Fee contributions from cable operators pursuant to the Decision and Orders.

I. Assignment. Hawaii Public Television shall not assign any of its rights under this Agreement nor delegate any of its duties, obligations, or responsibilities required to be performed under this Agreement without the prior written consent of the Director.

J. Modification of Agreement. Any modification, alteration, or amendment of any term, provision, or condition of this Agreement shall be in writing and signed by the parties hereto.

K. Indemnification. Hawaii Public Television shall defend, indemnify and save harmless the State of Hawaii, its departments and agencies, its officers, employees and agents from and against any and all claims, actions, losses, expenses, damages, or liability to person or property arising out of or resulting from any provision or requirement of this Agreement, or in exercising its rights or in performing its obligations under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.

L. Default. In the event Hawaii Public Television fails to satisfactorily perform in a timely or proper manner any of its obligations or responsibilities or fails to observe or perform any term or condition required to be performed or observed by Hawaii Public Television under this Agreement, and having been given notice of and reasonable opportunity to cure the same, fails to take satisfactory corrective action within the time specified, the Director, in addition to all other available rights and remedies, shall have the right to terminate this Agreement. The Director shall have the right to designate one or more entities as the successor recipient of HPBA Fees, and to enter into an agreement with any such successor or successors.

M. Termination.

1. In the event any one or more of the cable operators' cable communications franchise is terminated, or the HPBA Fees paid by such

operator or operators are terminated for any reason, this Agreement shall be automatically terminated concurrently therewith only to the extent of the HPBA Fees covered by that franchise or franchises.

2. In the event any court, agency, commission, legislative body, or other authority of competent jurisdiction declares invalid any part of the Decisions and Orders relating to the HPBA Fee, this Agreement may be terminated by the Director or Hawaii Public Television upon 30 days prior written notice to the other party.

3. In the event Hawaii Public Television or any successor entity shall no longer exist as a nonprofit corporation authorized to do business in the State of Hawaii or once having undertaken, ceases to support or manage and operate the television facilities now operated by HPBA, or such television facilities shall no longer broadcast primarily public television programming, this Agreement shall be automatically terminated on the date of any such occurrence as determined by the Director. "Public television programming" shall mean and include programs provided by the Public Broadcasting System and/or other noncommercial programming locally or nationally produced which include news, public affairs, culture and the arts, and educational materials.

4. The Director, when the interests of the State so require, may terminate this Agreement for the convenience of the State. The Director shall give at least 30 days prior written notice of termination to Hawaii Public Television.

N. Relinquishment and Return of HPBA Fees and Facilities and Equipment.

1. If this Agreement is terminated under paragraph M 3 hereof, or as a result or consequence of default under paragraph L hereof, Hawaii Public Television shall, at the direction of the Director, (a) immediately relinquish any and all claims to the HPBA Fees, and any facilities and equipment purchased with said fees; and (b) within 60 days provide the Director with a verified accounting of HPBA Fees and transfer to DCCA or its designee the balance of the accounts, and all applicable facilities and equipment. If any facility and/or equipment has been purchased or acquired with funds from other sources and not solely from HPBA Fees, the disposition of such facility and/or equipment shall be by appropriate appraisal and allocation agreed to by the Director and Hawaii Public Television.

2. Upon termination of this Agreement under paragraphs M 1, M 2 or M 4 hereof, Hawaii Public Television shall immediately relinquish any and all claims to further HPBA Fees. The facilities and equipment acquired with HPBA Fees may be used by HPBA or Hawaii Public Television, whichever the case may be, so long as Hawaii Public Television continues to solely support HPBA, or HPBA or Hawaii Public Television continues to manage and operate the television facilities now operated by HPBA, or such television facilities continues to broadcast primarily public and not commercial television programming. Otherwise and at the direction of the Director, the disposition of facilities and equipment acquired with HPBA Fees shall be as provided in paragraph N1 above.

O. Performance. The failure of the Director at any time to require performance of any obligation or condition under this Agreement shall not affect the right of the Director to enforce the same. The waiver by the Director of any breach of any term or condition of this Agreement shall not be deemed or held to be a waiver of any succeeding breach of such term or condition or as a waiver of the term or condition itself.


P. Entire Agreement. This Agreement shall constitute the entire understanding between the parties, superseding any and all previous understandings or agreements, oral or written, pertaining to the subject matter contained herein.

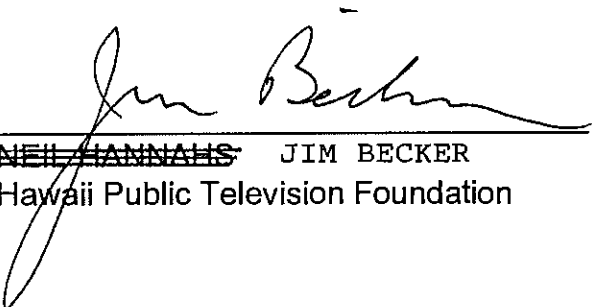
Q. Waiver. The Director shall have the right to waive any condition or obligation required to be observed or performed upon a showing of good cause.

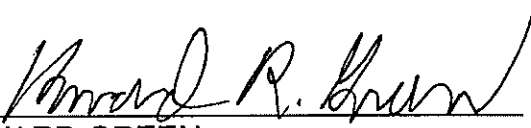
R. Compliance with Laws. Hawaii Public Television shall comply with all applicable federal, state, and local laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time.

S. Filings and Notices. All filings required to be made or written notice required to be given by a party shall be delivered personally or sent by United States first class mail, postage prepaid, to the other party at such party's mailing address.

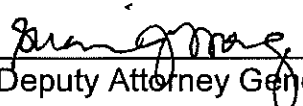
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

  
\_\_\_\_\_  
KATHRYN S. MATAYOSHI  
Director of Commerce and Consumer Affairs

  
\_\_\_\_\_  
~~NEIL HANNAHS~~ JIM BECKER  
Hawaii Public Television Foundation

  
\_\_\_\_\_  
HOWARD GREEN  
Hawaii Public Television Foundation

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy Attorney General