

SUPPLEMENTAL AGREEMENT NO. 38
TO AGREEMENT FOR PUBLIC, EDUCATIONAL, AND GOVERNMENTAL
ACCESS SERVICES

This "Supplemental Agreement No. 38" is entered on December 5, 2023 by and between (1) the **State of Hawaii ("STATE")** through its Director of Commerce and Consumer Affairs ("**DIRECTOR**"), and (2) **Ho`i`ike: Kauai Community Television, Inc. ("**CONTRACTOR**")**, a Hawaii nonprofit corporation whose business address is 4318 Rice Street, Lihue, Hawaii 96766.

RECITALS

WHEREAS, the STATE and CONTRACTOR previously entered into an "Agreement" on August 25, 1999 for, among other things, the management and operation of public, educational, and governmental ("**PEG**") access facilities, equipment, and channels for the island of Kauai;

WHEREAS, the term of the Agreement was automatically extended each year for one (1) year terms until December 31, 2003;

WHEREAS, the STATE and CONTRACTOR entered into Supplemental Agreement No. 1 on December 29, 2003, and extended the Agreement to April 30, 2004;

WHEREAS, the STATE and CONTRACTOR thereafter entered into Supplemental Agreement Nos. 2 to 37 and continuously extended the Agreement;

WHEREAS, the Agreement is currently extended to December 31, 2023;

WHEREAS, on July 1, 2011, Act 19 (SLH 2011) ("**Act 19**") took effect and authorizes the DIRECTOR to designate PEG access organizations; provided that such designations shall be exempt from Hawaii Revised Statutes ("**HRS**") chapter 103D;¹

WHEREAS, on September 2, 2011, the STATE issued Guidelines to Designate PEG Access Organizations Pursuant to Act 19;

WHEREAS, on October 4, 2012, the CONTRACTOR submitted an Application to Provide PEG Access Services for the island of Kauai ("**Application**") to the DIRECTOR;

WHEREAS, the State and Contractor are aware of the Federal Communications Commission's ("**FCC**") conclusion in its 2019 order, Implementation of Section 621(a)(1) of the Cable Communications Policy Act, Third Report and Order, MB Docket No. 05-311, FCC 19-80, 84 Fed. Reg. 44725 (August 27, 2019), and related judicial appeals

¹ Act 93 (SLH 2014), signed into law on June 16, 2014, removed the sunset provision in Act 19, thereby permanently allowing the Director to designate access organizations to oversee PEG channels. The Director's authority to designate access organizations to oversee PEG channels is codified under HRS § 440G-8.3.

and orders, that cable related in-kind contributions required by a cable franchise agreement are franchise fees subject to the statutory five percent (5%) cap on franchise fees, may have the potential to affect the STATE's ability to provide funding to CONTRACTOR at levels similar to previous terms of this Agreement;

WHEREAS, the STATE is presently reviewing the CONTRACTOR's Application, supporting documentation, intervener's testimony, and public comments, and in light of the ongoing proceedings, the STATE needs additional time for review and to consider all factors; and

WHEREAS, to allow the uninterrupted provision of PEG access services to cable television subscribers, and to provide time to complete the selection and designation process for a PEG access organization on Kauai, the STATE and CONTRACTOR desire to enter into another Supplemental Agreement to further extend the Agreement from December 31, 2023 to December 31, 2024.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, the STATE and the CONTRACTOR hereby agree as follows:

1. **Term of the Agreement**

Paragraph A. of the Agreement ("Term") is replaced in its entirety with the following:

- "a. The Agreement shall be extended from December 31, 2023 to December 31, 2024.
- b. Thereafter, the parties may enter into another Supplemental Agreement to further extend the Agreement."

2. **Termination**

a. Paragraph M.3. of the Agreement ("Termination") is replaced in its entirety with the following:

- "3. The DIRECTOR may, when the interests of the STATE so require, terminate this Agreement for the convenience of the STATE. The DIRECTOR shall give at least sixty (60) calendar days' prior written notice of the termination to the CONTRACTOR."

b. New Paragraph M.4 is added:

- "4. In the event the CONTRACTOR is designated as a PEG access organization for Kauai by the DIRECTOR, and the CONTRACTOR and the DIRECTOR subsequently enter into a new agreement for the management and operation of PEG access facilities,

equipment, and channels for the island of Kauai prior to the expiration of this Agreement, this Agreement shall terminate upon the effective date of the new agreement.”

3. Execution

- a. This Supplemental Agreement No. 38 may be executed utilizing electronic signature (also known as “digital signature” and “e-signature”).
- b. This Supplemental Agreement No. 38 may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

4. Other Provisions of the Agreement

Except as otherwise provided herein, the remaining provisions of the Agreement shall continue to remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Supplemental Agreement No. 38 on December 5, 2023.

STATE OF HAWAII

HO'IKE: KAUAI COMMUNITY TELEVISION, INC.

By: *Nadine Y. Ando*

By: *E. Allegra Gaines*

Nadine Y. Ando
(Print Name)

Allegra Gaines
(Print Name)

Title: Director of the Department of Commerce and Consumer Affairs

Title: President & CEO

Date: December 5, 2023

Date: December 4, 2023

APPROVED AS TO FORM:

[Signature]
Deputy Attorney General