



RALPH D. TURLINGTON
COMMISSIONER

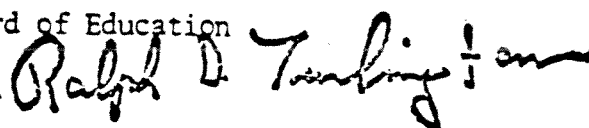
APPROVED BY THE STATE BOARD OF EDUCATION

STATE OF FLORIDA
DEPARTMENT OF EDUCATION
TALLAHASSEE 32304

October 2, 1979

MEMORANDUM

TO: Members, State Board of Education

FROM: Ralph D. Turlington 

SUBJECT: Agenda Item: Lease Agreement for the Use of a
Television Facility and Equipment Between the State
Board of Education and Community Television Foundation
Inc. of South Florida (WPBT, Miami)

The Legislature in Item AI, Section 4, of the Appropriations Act of 1977 allocated \$768,274 for WPBT, Miami. This lease agreement is to implement the legislative intent of this section. The State Board of Education has acquired the building and equipment for use by WPBT. This agreement delineates the terms of the lease for this facility and equipment.

The contact person for matters pertaining to this agreement would be the Department's Administrator for Public Broadcasting, Eric Smith, 202 Avant Building, 488-0940.

Your consideration and approval is respectfully requested.

esw

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PUBLIC BROADCASTING
DEPT. OF EDUCATION

AGREEMENT

This Agreement, made this 2ND day of October, 1979, between the Board of Education of the State of Florida (hereinafter called "Board"), and Community Television Foundation of South Florida, Incorporated (hereinafter called "Foundation"), a Florida not-for-profit corporation operating television station WPBT on Channel 2 licensed to Miami, Florida, sets forth the terms under which Board will direct the expenditure in behalf of Foundation of \$768,274 appropriated for Foundation as Item AI in Section 4 of Ch. 77-465, Laws of Florida (the 1977 Appropriation Act).

1. AMOUNT OF GRANT. Board agrees to purchase the equipment and the land and building described below ("Capital Items") for use by and lease to the Foundation, up to the total grant amount of \$768,274. If completion of any acquisition requires additional funds, Foundation agrees to assume liability for any excess payment on acquisitions begun with Board funds pursuant to this Agreement. Foundation waives any rights of ownership which might be based on payment of part of the costs of any such acquisitions. Foundation shall have the right to eliminate any part of the Capital Items to be purchased, and may elect to expend any proportion of the grant on any part or parts of the foregoing items to be purchased. While the foregoing items to be purchased shall include all accessories and ancillary outlays for installation, including but not limited to shipping, taxes, fees, architects' and surveyors' fees, no purchases under this Agreement shall be made other than the items described above.

2. CAPITAL ITEMS TO BE PURCHASED.

(a) Land and Building. Board shall purchase for the benefit of and lease to Foundation a certain parcel of land adjacent to Foundation's studio building property in North Miami, Florida, of some 30,927 square feet, more or less, and the two-story building presently located thereon, more particularly described as:

Lot 2, in Block 2 of FINKEL'S INDUSTRIAL SUBDIVISION, SECTION ONE, as recorded in Plat Book 71, page 62 of the Public Records of Dade County, Florida, less:
That portion lying South of a line that is 15 feet South of and parallel to the North line of said Lot 2 and lying West of a line that is 229.88 feet East of and parallel to the West line of said Lot 2, all as measured along the West and South lines of said Lot 2, lying and being in the City of North Miami, Dade County.

Certain obligations of Foundation incidental to use thereof are further described below in paragraph 3(e) of this Agreement.

(b) Studio Production Equipment. Board shall cause to be purchased television production equipment, according to specifications provided by Foundation to ensure the suitability of the equipment and its compatibility with other units of the same types of equipment currently in use by Foundation for its public broadcasting purposes.

3. LEASE OF CAPITAL ITEMS. Board agrees, subject to Foundation's continuing compliance with all terms of this Agreement, to lease the Capital Items to Foundation for \$1.00 per year, for a term of forty years.

(a) Expiration of Lease. Upon expiration of this lease, Board shall convey to Foundation fee simple title to the Capital Items. If Board or its successors in interest shall at that time lack authority to make such conveyance, then this lease shall be renewed at Foundation's option for a term of 20 years or until either it is earlier terminated under other provisions hereof, or Board earlier acquires the authority to make the conveyance. Consideration to Board for such conveyance shall be limited solely to Foundation's performance under this Agreement during its initial term.

(b) Disposition of Capital Items. If at any time while this Agreement is in effect, Foundation wishes to dispose of any of the Capital Items, it shall notify Board of its intent to do so, specifying details of the contemplated disposition, such as trade-in, abandonment, or demolition. Board shall advise Foundation if disposition in the requested manner is authorized, and if it is not, then what manner of disposition would be acceptable to Board. Board shall have the right to require Foundation to pay over to it all cash proceeds, net of necessary and reasonable costs of disposition, from disposition of Capital Items. If costs of disposition of any item exceed proceeds realized from disposition, Foundation agrees to bear all such costs. This paragraph does not apply to land.

(c) Use of Capital Items. Foundation agrees to use the Capital Items in support of the operation of the educational and/or public broadcasting and/or communication system or systems for which it now holds or in the future may hold, a license from the Federal Communications Commission. Foundation shall make no other use of the items.

(d) Default. If Foundation shall at any time during the term of this Agreement become insolvent or make any assignment for the benefit of creditors, call a general meeting of creditors or enter into any informal arrangement or composition with creditors, or if a receiver or any officer

of a court shall be appointed or have control of any of the property or assets of Foundation, be declared bankrupt by voluntary or involuntary proceedings, relinquish or otherwise lose its broadcast license, terminate or cease its operation as an educational and/or public broadcasting and/or communication system or systems, or be found by a court of competent jurisdiction to be in default under one or more of the terms of this Agreement, then this lease shall terminate thirty days after Board's notice to Foundation to elect termination under the terms hereof, but in no event less than 30 days after the event of default, unless Foundation shall have cured such default during the 30-day period, and Board shall without further consideration to Foundation acquire all rights of ownership to the Capital Items, which Foundation agrees to deliver to Board at the Place(s) where they are in use, in good and operable condition, reasonable wear and tear of use excepted. If, however, Foundation's operations should be interrupted solely by reason of a natural catastrophe, accident, or injury or death of its personnel, then Board shall not exercise its rights under default as described above so long as Foundation shall be in the process of making diligent efforts to resume its operation within a reasonable time, and shall remain free of the circumstances of bankruptcy or insolvency as described above.

(e) Liens. Foundation agrees to keep the above-described property free from mechanic's, tax, or any other lien, including mortgage, and if any lien should be filed against the property by reason of or arising out of any labor or material furnished or alleged to have been furnished to or for the Foundation at the property or for or by reason of any change, alteration

or addition or the cost or expense thereof or any contract relating thereto, or against Foundation or Board as owner thereof, Foundation at its expense shall within 30 days cause the same to be cancelled and discharged of record, or transferred to security, and shall defend on behalf of Board at Foundation's expense any action, suit or proceeding which may be brought thereon.

4. OPERATING COSTS AND CONTROL OF CAPITAL ITEMS. During the term of this Agreement, Foundation shall have sole and exclusive control over the uses of the Capital Items, subject to Board's rights of inspection described below. Board specifically agrees that it shall exercise no control whatsoever over television programs or programming, production or dissemination of which is accomplished in whole or in part by use of the Capital Items. Foundation agrees to bear all costs of using or operating the Capital Items, including, but not limited to: taxes on the items, insurance premiums to insure the items, any utilities used in or for the Capital Items, maintenance and upkeep required to keep the equipment and premises in good and usable condition, materials used in or with the Capital Items, and the salaries, fringe benefits, and costs of recruitment and training of personnel who use, or work in, the Capital Items.

5. INSTALLATION OF EQUIPMENT AND ALTERATIONS. Foundation may at any time during the term of this Agreement make alterations, changes or improvements to the Capital Items, so long as Foundation bears all expense and liability associated with the making of such changes, alterations or improvements and the changes, alterations or improvements do not render the items less suitable for use for the uses (described above in paragraph 3.c.)

for which they were acquired. Any alterations, changes or improvements which require the issuance of a building permit by any local governmental authority may not be made until Foundation has first submitted a written description of such changes to Department of General Services, together with any drawings, pictures or other data required to describe the proposed changes, and received back from Department of General Services, approval of the proposed changes. Foundation may from time to time install or place equipment, supplies, materials, or other property belonging to it in the building included among the Capital Items. Board shall at no time during the term of the Agreement, or after its termination, have any rights of ownership in such equipment, supplies, materials or other property.

6. HOLD HARMLESS AND INSURANCE. Foundation shall hold Board harmless from any and all liabilities, claims, actions or causes of actions arising from or pertaining in any way to the use, operation, or ownership of the Capital Items after such time as Foundation shall take possession or occupancy of them. Also from such time and throughout the term of this Agreement, Foundation shall maintain fire, windstorm, and extended coverage insurance on the Capital Items in at least the actual cash value of the Capital Items, as such actual cash value may from time to time be reasonably determined. Foundation shall also maintain, with respect to the building among the Capital Items, comprehensive personal liability insurance in at least the amount of \$500,000 per occurrence.

7. INSPECTION OF CONDITION AND USE. Upon reasonable notice, Board or its designated representative shall have the right at any time during Foundation's normal business hours to inspect the Capital Items in order to determine their presence in Foundation's custody, their condition and fitness for use, and the uses to which they may at such time be, or have been, put. Foundation agrees to make available to Board any and all of its

records pertaining to the Capital Items and their use, to assist in any such inspection by Board. Foundation further agrees to render to Board, within a reasonable time after receipt of the Board's request, an inventory, report and affidavit attesting to the presence of the Capital Items in Foundation's custody, their condition and fitness for use at such time, and the uses to which they may at such time be, or have been put, noting any exceptions which may at such time exist. Upon request of the Commissioner of Education, Foundation shall permit the Auditor General or his designee to audit the financial books and records of Foundation.

8. NOTICE. Any notice to Board under this Agreement shall be deemed to be duly given only if in writing and mailed by registered or certified mail to Office of the Commissioner, Department of Education, State of Florida, Tallahassee, Florida 32304. Any notice to Foundation under this Agreement shall be deemed to be duly given only if in writing and mailed by registered or certified mail to Community Television Foundation of South Florida, Inc., P.O. Box 610001, North Miami, Florida 33161.

9. RECORDING. At the request of either party, both parties agree to execute and deliver in recordable form a memorandum of this agreement containing such provisions hereof as either party may desire. In the event that the lease of the land and building to Foundation hereunder is terminated for any reason, the parties will deliver an instrument in recordable form sufficient to show such termination.

IN WITNESS OF THIS AGREEMENT, Board and Foundation, respectively, have caused this Agreement to be duly executed by an officer hereunto duly authorized on the day and year first above written.

COMMUNITY TELEVISION FOUNDATION OF
SOUTH FLORIDA, INC.

By: *George Dowley*
President

STATE BOARD OF EDUCATION
STATE OF FLORIDA

By: *Ralph D. Turlington*
Commissioner of Education

APPROVED AS TO FORM, BUT LEGALITY
SUBJECT TO EXECUTION BY ALL PARTIES
OFFICE OF THE GENERAL COUNSEL
FLORIDA BOARD OF EDUCATION

BY: *Robert Siper*

APPROVED
James J. Zuller, Jr.
SEP 14 1979

Deputy Commissioner
for Administration